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The Iran-Iraq War:  
A Juridical Analysis of the Attacks on Neutral Ships  
, and Visit and Search Operations in the  
Persian Gulf

by

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## I. Introduction

### A. Statement of the Issue

This paper addresses two major issues arising out of the current war between Iran and Iraq: (1) whether the missile attacks carried out by each belligerent against neutral shipping is consistent with international law; and (2) whether the Iranian visit and search operations conducted onboard neutral vessels transiting the Persian Gulf are consistent with international law.

### B. Scope of the Inquiry

The law of armed conflict concerns the lawfulness of resorting to war (which is generally prohibited by the United Nations Charter)<sup>1</sup> as well as the conduct of warfare (which is permitted under the rubric of individual or collective self-defense).<sup>2</sup> This paper is concerned with the latter as applied to particular aspects of the Iran-Iraq conflict. Questions regarding legal responsibility for starting the war as well as issues such as the use of chemical weapons or the treatment of prisoners are not considered.

No attempt is made to assess the merits of particular attacks against or visits on neutral ships. Rather, this analysis focuses on the general methods employed by the participants. For instance,

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<sup>1</sup>U.N. Charter arts. 1, 2(3)-(4).

<sup>2</sup>Id. at art. 51.





Iraqi attacks have -- in addition to those against neutral ships in the exclusion zone -- included attacks outside the exclusion zone, attacks against Iranian vessels and vessels of mistaken identity, and mining waterways. These incidents and activities are outside the scope of this analysis.<sup>3</sup>

C. Basic Principles Concerning the Law of Armed Conflict

The two underlying principles of the law of armed conflict are military necessity and humanity.<sup>4</sup> Broadly stated, military necessity refers to the justifiable application of any amount of force needed to overpower an enemy. This principle has been interpreted narrowly in the U.S. Armed Forces to allow "that degree and kind of regulated force, not otherwise prohibited by the laws of war, required for the partial or complete submission of the enemy with the least possible expenditure of time, life, and physical resources."<sup>5</sup>

The principle of military necessity limits lawful violence to that needed for the accomplishment of lawful military objec-

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<sup>3</sup>Recently, Iraqi attacks outside the war zone have increased. Capitalizing on long-range aircraft, Iraq has attacked neutral ships in the vicinity of Sirri Island and the Strait of Hormuz. See Washington Post, Aug. 21, 1986, at A22.

<sup>4</sup>L. Oppenheim, International Law: Disputes, War and Neutrality sec. 67 (H. Lauterpacht 7<sup>th</sup> ed. 1952) [hereinafter cited as 2 Oppenheim-Lauterpacht].

<sup>5</sup>Dep't of the Navy, Chief of Naval Operations, Law of Naval Warfare, NWIP 10-2, sec. 220 (1955) (footnotes omitted) [hereinafter cited as Law of Naval Warfare]. See also Dep't of the Air Force, Judge Advocate General, Commander's Handbook on the Law of Armed Conflict in AFP 110-34, paras. 1-1, 2-1, 2-2 (25 July 1980) (reflecting a similar application of the military necessity principle).



tives. As a practical matter, this principle is imprecise given the uncertain definition of "lawful" objectives and the ambiguities of human conduct and intentions.<sup>6</sup> Two related concepts aid -- but do not solve the problem of -- determining what is lawful force: relevance and proportionality.<sup>7</sup> Relevancy refers to the relationship between the destruction and the objective; proportionality refers to the level of destruction relative to the military value of the objective.<sup>8</sup>

The principle of humanity "prohibits the employment of any kind or degree of force not necessary for the purpose of war, i.e., for the partial or complete submission of the enemy...."<sup>9</sup> This principle is consistent with and complementary to that of military necessity.<sup>10</sup> Each principle serves to recognize the legitimate aims of war while preventing unnecessary destruction of human and material values.<sup>11</sup>

This analysis of the attacks and visits on neutral shipping are applied in the context of these principles. The issue is whether the particular methods examined comport with the requirements of these basic concepts. Does attacking neutral vessels constitute a legitimate military objective for Iran and Iraq? Are the

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<sup>6</sup>M. McDougal & F. Feliciano, Law and Minimum World Public Order 524-25 (1961).

<sup>7</sup>Id.

<sup>8</sup>Id.

<sup>9</sup>Law of Naval Warfare, supra note 5, at sec. 220(b) (footnote omitted); see also 2 Oppenheim-Lauterpacht, supra note 4, at sec. 67 (discussing the humanity principle).

<sup>10</sup>W. Mallison, Studies in the Law of Naval Warfare: Submarines in General and Limited Wars in U.S. Naval War College, Int'l Law Studies, 1966 16-19 (1968) [hereinafter cited as Studies].

<sup>11</sup>M. McDougal & F. Feliciano, supra note 6, at 522-523.





visit and search procedures employed by Iran appropriate under the circumstances?

D. Organization

A juridicial analysis of a practice or method of coercion under the law of armed conflict involves considering several factors: first, the factual context of the method; second, the historical development of the method and the customary rules which purport to regulate the method; and lastly, the contemporary context of usage which should be considered if international law is to adapt to the changing conditions of warfare and remain relevant to modern-day needs of maintaining minimum world order.

Accordingly, this analysis is organized as follows: first, a review of the war's origins and the belligerents' military capabilities and objectives; second, a chronology of major developments surrounding the tanker war in the Persian Gulf; third, an overview of the traditional or customary law concerning neutral rights, contraband control, visit and search, blockades, and exclusion zones; and finally, an analysis of the attacks against and searches of shipping in light of the customary law and other contextual factors which take into account the circumstances surrounding the Iran-Iraq War.



## II. Overview of the Iran-Iraq War

### A. Origins of the War

The Iran-Iraq War began ostensibly out of an old boundary dispute over the Shatt al-Arab, an estuary extending north from the Persian Gulf to where the Tigris and Euphrates Rivers converge. Underlying this dispute are other territorial issues concerning the northern border areas and some islands in the Persian Gulf, along with long-standing ethnic, religious, and political animosities which have characterized Iraqi-Iranian relations for centuries.

However, the most dramatic aspect of the dispute centers on the Shatt al-Arab which forms a fifty-mile border between Iran and Iraq. This estuary is of strategic and commercial importance to both countries. It provides Iraq with its only port on the Persian Gulf<sup>12</sup> and Iran maritime access for its oil refinery at Abadan and the port of Khorramshahr.<sup>13</sup>

Conflict over the Shatt al-Arab dates back a millenium. Over time numerous conferences, surveys, and demarcations have

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<sup>12</sup>Iraq has two major ports on to the Persian Gulf: Basra (which is located toward the northern end of the Shatt) and the Fao Peninsula (located to the west of the Shatt al-Arab). See M. Khadduri & H. Dixon, Passage Through International Waterways in Major Middle Eastern Problems in International Law 65, 88 (M. Khadduri ed. 1972) (discussing the strategic importance of the waterway for Iraq).

<sup>13</sup>Id. at 89. Other major Iranian ports include Bandar Khomeini and Bandar Mahshahr (at the northern end of the Persian Gulf), also Bushehr (about 100 miles further south of Bandar Mahshahr), Kharg Island (off the coast of Iran), and Bandar Abbas. See also S. Grummon, The Iran-Iraq War -- Islam Embattled 3-6 (The Washington Papers No. 92 1982). (detailing the relative significance of the Shatt al-Arab for Iran and Iraq).





to define and redefine the boundary. An agreement was concluded at Zuhab in 1639, which, inter alia, addressed the boundary.<sup>14</sup> This produced no permanent agreement. The Treaty of Erzurum (1847) gave Abadan and Khorramshahr to Iran (which was then called Persia) along with guaranteed access to the Gulf through the Shatt al-Arab; sovereignty over the Shatt al-Arab went to Iraq (which was then part of the Ottoman Empire).<sup>15</sup>

Later, Russia and Great Britain attempted to mediate a permanent settlement. A 1913 Protocol and 1914 Delimitation Commission affirmed Ottoman sovereignty over the entire Shatt al-Arab.<sup>16</sup> Persia subsequently contested this, seeking a boundary down the middle (thalweg) of the waterway. In yet another treaty, concluded in 1937, Persia gained control of the waterway up to the thalweg in the Abadan area.<sup>17</sup> Differences continued, however, and in 1969 Iran repudiated the 1937 treaty and seized control of the entire length of Shatt al-Arab up to the thalweg.<sup>18</sup>

In 1975, the Algerian Government mediated a treaty under which the thalweg was recognized as the boundary for the entire

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<sup>14</sup>C. Helms, Iraq: Eastern Flank of the Arab World 143 (1984).

<sup>15</sup>Lauterpacht, River Boundaries: Legal Aspects of the Shatt al-Arab Frontier, 9 Int'l & Comp. L.Q. 208-36 (1960) (providing historical background to the border dispute).

<sup>16</sup>See M. Khadduri & H. Dixon, supra note 12, at 90.

<sup>17</sup>Boundary Treaty, July 4, 1937, Irak-Iran, 190 L.N.T.S. 256.

<sup>18</sup>See M. Khadduri & H. Dixon, supra note 12, at 91-92; C. Helms, supra note 14, at 144.



Shatt al-Arab.<sup>19</sup>

Two other territorial aspects are part of the underlying disputes: the central border region and the Iraqi demand for the return of several islands in the southern Gulf to Arab sovereignty.<sup>20</sup>

A second dimension to the dispute is the cultural and religious differences between the two nations. Iran is made up primarily of Persians who are predominately Shiite Muslims; Iraq consists mainly of Arabs and is ruled by Sunni Muslims.<sup>21</sup> The presence of approximately seven million Shiites (many of Persian dissent) in Iraq has been a source of unrest and friction between the two states. For instance, Iraq has long seen Iran as a propagator of Kurdish and Shia unrest in Iraq; Iran, on the other hand, has held Iraq responsible for agitating unrest

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<sup>19</sup>See C. Helms, supra note 14, at 149-150 (explaining also the political pressures on the parties for concluding the agreement); S. Grummon, supra note 13, at 10; Iraq's Baath Party considered this agreement an humiliation -- it was a product of duress since Iran held the upper hand militarily and was actively supporting Kurdish autonomy in northern Iraq. As a quid pro quo for ceasing their support of the Kurds, Iraq conceded Iranian sovereignty over the Shatt al-Arab up to the thalweg.

<sup>20</sup>See C. Helms, supra note 14, at 144-45, 147-48, 164 (discussing the central border and island issues).

<sup>21</sup>Differences between Sunni and Shiite Muslims date back to beginning of Islam in the seventh century A.D.; the basis for the schism lies in their differing views over who should rightfully lead the Islamic community. For a discussion on how the two sects have co-existed in Iraq, see C. Helms, supra note 14, at 141-42.



among Iranian Arabs in Kurdistan.<sup>22</sup>

A third dimension to the causes of the conflict which overlaps the cultural and religious differences are the political ideologies of the two governments. Iraq is ruled by the Baath Party lead by Saddam Hussein; it is a secular regime which espouses pan-Arab nationalism and socialism.<sup>23</sup> Since 1945, Iraq's ideology has competed with the status quo of the conservative monarchies.<sup>24</sup> The rivalry carried over with the fall of the Shah and the rise of Islamic fundamentalism in Iran. Ayatollah Khomeini's regime has shifted the schism to one of secularism versus traditional Islamic dogma. Khomeini's regime claims to be based on the teachings of the Qur'an, clerical leadership, and Islamic internationalism, i.e., the spread of the Islamic revolution throughout the Muslim world.<sup>25</sup>

Animosity between Iraq and the new Iranian government was evident from the beginning. Khomeini has taken a provocative and inflammatory position toward Arab nationalism in general

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<sup>22</sup>C. Helms, supra note 14, at 153-57; S. Grummon, supra note 13, at 12. These differences were ostensibly settled--to some extent--in the 1975 Treaty wherein each agreed not to interfere in the other's internal affairs. However, Iran renewed its support of subversion in Iraq after the 1978-79 revolution. C. Helms, supra note 14, at 139-41.

<sup>23</sup>C. Helms, supra note 14, at 103-25.

<sup>24</sup>See id. at 130-41; S. Grummon, supra note 13, at 7-8. Up until 1978-79, the Shah of Iran was instrumental in maintaining the status quo.

<sup>25</sup>See generally D. Pipes, In the Path of God (1983) (providing historical background and a contemporary analysis of Islamic fundamentalism as a political-religious movement). For a discussion of Ayatollah Khomeini's objectives in Iran, see id. at 27, 216-17; R. Ramazani, Khomeini's Islam in Iran's Foreign Policy in Islam in Foreign Policy 16-20 (Adeed Dawisha ed. 1983).





and toward Hussein in particular.<sup>26</sup> Likewise, Hussein has indicated the incompatibility between the pan-Arab movement and Iran's fundamentalists. In 1979, he stated: "[I]n order for the Islamic revolution to be Islamic, it must be a friend of the Arab revolution. Any contradiction between a revolution which calls itself Islamic and the Arab revolution means that that revolution is not Islamic."<sup>27</sup> With Khomeini's ascendance to power, the stage was set for conflict.

By the summer of 1980, tensions increased. Iraq accused Iran of not abiding by its obligations under the 1975 Treaty.<sup>28</sup> Border hostilities initiated by both sides ensued.<sup>29</sup> On September 17, Iraq formally abrogated the 1975 Treaty.<sup>30</sup> On September 22, Iraq launched a large-scale attack into southwestern Iran.<sup>31</sup>

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<sup>26</sup>Interview with Khomeini at Qum (appearing in the Lebanese newspaper, Jumhuri-yi Islami, on Jan. 2, 1980), reprinted in Islam and Revolution -- Writings and Declarations of Imam Khomeini 329, 332 (H. Algar ed. and trans. 1981); see also C. Helms, supra note 14, at 159-60 (describing Khomeini's basic attitudes towards and ideological distinctions with Hussein and the Baath Party); Helms, The Iraqi Dilemma, Journal of American-Arab Affairs, Summer 1983, at 154 (discussing Khomeini's call for the overthrow of the Baath Party).

<sup>27</sup>Foreign Broadcast Information Service (FBIS), Daily Report: MEA, Oct. 17, 1979, at E4, quoted in C. Helms, supra note 14, at 159.

<sup>28</sup>C. Helms, supra note 14, at 163.

<sup>29</sup>Id. at 163; S. Grummon, supra note 13, at 12-14.

<sup>30</sup>Id.

<sup>31</sup>See supra note 29; see also Daly, The Enduring Gulf War, U.S. Naval Institute Proceedings, May 1985, at 148, 153 (providing a short description of the early stages of the war). Iraq may claim that it acted in self-defense in response to Iranian cross-border attacks.



## B. Iraqi War Aims and Assumptions

Iraq's initial objectives included: reasserting sovereignty over the Shatt al-Arab; obtaining the return of several islands (located near the Strait of Hormuz) to Arab sovereignty; obtaining self-rule for Arabs living in Khuzestan Province (which borders the Shatt al-Arab); and preventing further Iranian interference in its internal affairs.<sup>32</sup> A more comprehensive objective emerged when Iran began conducting counteroffensives.<sup>33</sup> One observer comments:

As the war continued...statements related strictly to Iraqi territorial claims receded and a deeper concern ...came to surface and become paramount: the specter of an Islamic government dominated by Khomeini....[T]he Iraqi Ba'thists sought to discredit or encourage the overthrow of the Islamic revolutionaries in Iran and thus lessen the political threat posed by their ideology. An important objective was to deliver a blow sufficient to dissuade Iran from interfering in internal Iraqi affairs.<sup>34</sup>

Certain assumptions lead the Iraqi leadership to believe that their goals were attainable through a short decisive opera-

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<sup>32</sup>Daly, supra note 31, at 152 (referring to official Iraqi pronouncements); C. Helms, supra note 14, at 164; Evans & Company, Iran-Iraq: Bloody Tomorrows, U.S. Naval Institute Proceedings, Jan. 1985, at 34-35 (pointing out that Khuzestan Province -- the area invaded by Iraq -- contains valuable oil reserves).

<sup>33</sup>See C. Helms, supra note 14 at 164; S. Grummon, supra note 13, at 15-16. This aim has apparently receded in light of the Iraq's willingness to negotiate a settlement. See infra note 66. However, logically Iraq remains concerned with the continued existence of the Islamic Republic in light of Khomeini's avowed goal of forcing the overthrow of Hussein's regime. See supra note 26.

<sup>34</sup>C. Helms, supra note 14, at 164; see [1982] 28 Keesing's Contemporary Archives 31519, quoting an Iraqi official as saying that the war is not one of borders but one of "Iraqi independence, peace, and security."



tion.<sup>35</sup>

The Iraqi's believed that Iran's military had been fatally damaged by the revolution and that Iran's leadership was divided.<sup>36</sup> They also thought that the Iranian population did not support the revolution and that Iran's political ideology would alienate other Arab states.<sup>37</sup>

### C. Iran's Objectives and Responses to the Iraqi Attack

Iran's objectives have remained essentially the same throughout the conflict. The initial objective was to repel the Iraqi incursion.<sup>38</sup> But Iran also sought a comprehensive political victory over Iraq which includes: the removal of Hussein and the Baath Party, an admission of aggression, reparations, and repatriation of Shiite Arabs.<sup>39</sup> The demand for Hussein's removal is non-negotiable.<sup>40</sup>

The Iraqi's miscalculated the response of Iran's military and the resilience of its revolution.<sup>41</sup> The initial attack did not exploit Iran's weaknesses. Rather, it permitted Iran's

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<sup>35</sup>Daly, supra note 31, at 152; S. Grummon, supra note 13, at 17-18.

<sup>36</sup>C. Helms, supra note 14, at 165-66; Daly, supra note 31, at 152; S. Grummon, supra note 13, at 9.

<sup>37</sup>See supra note 36.

<sup>38</sup>Daly, supra note 31, at 152.

<sup>39</sup>Id. Iraq previously expelled some 90,000 Shiites of Iranian origin. C. Helms, supra note 14, at 145-46.

<sup>40</sup>Daly, supra note 31, at 153; Sick, How Iran is Becoming the Gulf's Superpower, Washington Post, May 8, 1986, at F1, col. 1.

<sup>41</sup>See generally C. Helms, supra note 14, at 171-75 (outlining Iraqi miscalculations on the expected results of its initial attack on Iran).





armed forces to regain credibility and revitalize its operational capacity.<sup>42</sup> Iraq also helped consolidate Khomeini's authority by providing a rallying point for popular support.<sup>43</sup>

D. The Military Forces of Iran and Iraq -- Conduct of the War

Iran's strength lies in its geographic size, large population, and the motivation of its people, many of whom are driven by revolutionary and religious fervor that enables Iran to sustain heavy losses and still continue a war of attrition.<sup>44</sup> Additionally, despite enormous costs, Iran has supported its war by exporting oil, maintaining foreign currency reserves, and avoiding disabling debts.<sup>45</sup>

Iran has a sizeable armed force, but lacks sophisticated weaponry. At the outbreak of the war, Iran's forces numbered approximately 240,000; it had 450 aircraft but only 30-40% were

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<sup>42</sup>See Evans & Company, supra note 32, at 36-37; Speedhar, The Gulf -- Scramble for Security 35-36 (1983).

<sup>43</sup>See supra note 40; S. Bakhash, Reign of the Ayatolluhs 129 (1984); C. Bernard & Z. Khalilzad, The Government of God 182-85 (1985).

<sup>44</sup>See C. Helms, supra note 14, at 173; Evans & Company, supra note 32, at 37-38, [1986] 46 Facts on File No. 2366, Mar. 28, at 207-2D-G.

<sup>45</sup>See [1982] 28 Keesing's Contemporary Archives, 31520-22 (providing a summary of Iran's budget and finances during the first six months of the war); see also [1984] 44 Facts on File No. 2262, Mar. 23, at 201-1G (providing a summary of Iran's annual defense expenditures); Speedhar, supra note 42, at 37-39 (providing a brief assessment of Iran's military potential). In August 1985, Iran reportedly still produced about 2 million barrels of oil per day (mbd), 1.6 mbd of that was exported. [1985] Facts on File No. 2335, Aug. 23, at 619-3C.



operational.<sup>46</sup> In early 1984, estimates showed Iran having 2.2 million in its armed forces (1 million of which were ground troops).<sup>47</sup> Its forces are highly motivated and view martyrdom for the cause of Iran and its revolution as a means to paradise.<sup>48</sup> At the same time Iran was estimated to have only 70 aircraft.<sup>49</sup> Of all the armed services, Iran's navy is the smallest in terms of manpower and equipment.<sup>50</sup>

Iraq is smaller in geographic size and population.<sup>51</sup> At the outbreak of the war its economy was stronger; it was the world's second largest oil exporter and had a sound economic infrastructure.<sup>52</sup>

In 1980, Iraq's armed forces were approximately the same size as Iran's (240,000).<sup>53</sup> Iraq had a significant advantage in sophisticated weaponry.<sup>54</sup> By 1984, however, estimates showed Iraq's economy under considerable strain; its defense expenditures were about the same as Iran's, but it was in debt; Iraq's economy was contracting at a rate of 10% per year; moreover, there was

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<sup>46</sup>[1981] 27 Keesing's Contemporary Archives 31005, 31006 (providing a detailed breakdown of Iran's military situation and strength in September 1980 -- estimates provided by the Institute of Strategic Studies in London). Iran's population is estimated at 40 million. Id.

<sup>47</sup>[1984] 44 Facts on File No. 2262, Mar. 23, at 201-1C-1G.

<sup>48</sup>Evans & Campany, supra note 31, at 37-38.

<sup>49</sup>See supra note 47.

<sup>50</sup>Speedhar, supra note 42, at 39.

<sup>51</sup>Iraq's population is estimated at 14 million and its geographic area is about one-fourth that of Iran. [1981] 27 Keesing's Contemporary Archives 31006.

<sup>52</sup>Id.

<sup>53</sup>Id.

<sup>54</sup>[1982] 28 Keesing's Contemporary Archives 31522.



heavy reliance on assistance from European and Gulf states.<sup>55</sup> Iraq's ground troops were estimated at less than one-half million.<sup>56</sup> However, in military equipment -- particularly aircraft and missile systems -- Iraq continued to have a clear advantage.<sup>57</sup>

Iraq's forces have steadfastly defended their territory against Iranian advance, but morale and growing war weariness have been and remain a problem for the Iraqi leadership. Their troops are less willing than their Iranian counterparts to expose themselves to the enemy. Iran's relative strength in manpower has caused Iraq's military strategy to favor use of its advanced weapons over its ground forces.<sup>58</sup>

The war began with Iraq crossing the Shatt al-Arab into Khuzestan Province.<sup>59</sup> Iraq occupied Khorramshahr and laid siege

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<sup>55</sup>See [1984] 44 Facts on File No. 2262, Mar. 23, at 201-1C-2A (estimates are provided by the Institute for Strategic Studies in London); see also Staff of Senate Committee on Foreign Relations, 98th Cong., 2<sup>d</sup> Sess., War in the Gulf 24-26 (Comm. Print. 1984) [hereinafter cited as Committee Print - War in the Gulf]. This Senate staff report described Iraq as being in "serious but manageable shape"; it notes also growing domestic political problems in Iraq. Id. For a current assessment of economic conditions in Iran and Iraq, see Washington Post, Mar. 6, 1986, at A25 (suggesting that Iran remains better able to withstand long-term economic stress, whereas Iraq has had to sustain its population on an artificial economy buoyed by foreign assistance).

<sup>56</sup>[1984] Facts on File No. 2262, Mar. 23, at 201-1C-1G.

<sup>57</sup>Id. See also Committee Print - War in the Gulf, supra note 55, at 12 (providing a detailed summary of the military balance, including relative numbers of aircraft, tanks, artillery, naval combatants and border troops).

<sup>58</sup>See Committee Print - War in the Gulf, supra note 55, at 24; Sick, supra note 40, at FA, col. 4; [1986] 46 Facts on File No. 2366, Mar. 28, at 207-2D-F. As the stalemate continues, some look for this tendency to grow within the Iraqi ranks. See Time Mag., Mar. 3, 1986, at 50.

<sup>59</sup>Daly, supra note 31, at 153; Evans & Company, supra note 32, at 36-37.





to Abadan.<sup>60</sup> Iran responded with stiff resistance to Iraq's advances and with counterattacks on economic targets such as Iraq's oil exporting facilities at Basra and Fao.<sup>61</sup>

In 1981-82, Iran launched major counteroffensives and by May 1982 recaptured Khorramshahr and by June 1982 forced Iraq to withdraw from Iranian territory altogether.<sup>62</sup> By the end of 1982, Iran advanced into Iraqi territory. Iraq responded by increasing attacks on cities and oil installations.<sup>63</sup> By 1983, a war of attrition was underway and continued into 1984 with no significant gains by either side.<sup>64</sup>

In early 1984, Iraq was on the defensive and looking for ways to break the deadlock. Several strategies emerged: using chemical weapons, purchasing new armaments (primarily French-built Super Entendard aircraft and Exocet missiles), constructing extensive fortifications, and increasing air-launched attacks on Iranian economic targets (including oil exporting facilities

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<sup>60</sup>Daly, supra note 31, at 152.

<sup>61</sup>Evans & Company, supra note 32, at 37-38; see generally [1981] 27 Keesing's Contemporary Archives 31006-09 (detailing military events during the first year of the conflict).

<sup>62</sup>Evans & Company, supra note 32, at 38; see generally [1982] 28 Keesing's Contemporary Archives 31517-18, 31848-50 (detailing military events during the second year of the conflict).

<sup>63</sup>[1982] 28 Keesing's Contemporary Archives 31850.

<sup>64</sup>Daly, supra note 21, at 154; Helms, supra note 14, at 166-75 (assessing Iraq's strategy and miscalculations).





and shipping)).<sup>65</sup> Iraq also pursued a negotiated settlement, however, Iran has rejected such efforts -- unless Hussein is willing to step down.<sup>66</sup>

As the conflict continues into 1986 Iraq is seen as a slow, steady loser.<sup>67</sup> Iran has steadily gained the military initiative and has better sustained its war-making capacity.<sup>68</sup> On the ground, Iran has gained a foothold in the Fao Peninsula.<sup>69</sup> In the Persian Gulf, Iran has stepped up its attacks against and visits on neutral merchant ships.<sup>70</sup> Nevertheless, no clear outcome is in sight.<sup>71</sup>

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<sup>65</sup>See Evans & Company, supra note 32, at 38; Daly, supra note 31, at 155-58. These strategies did not begin in 1984, rather they evolved from the early stages of the conflict and intensified as the Iraqi's became increasingly defensive. [1982] 28 Keesing's Contemporary Archives 31517-19, 31522, 31948-50, see [1983] 29 Keesing's Contemporary Archives No. 12, 32594-95; [1985] 31 Keesing's Contemporary Archives No. 4, 33560-61 (describing Iranian offensives during 1983-84 and Iraqi missile attacks using French Entendard aircraft and Exocet missiles); [1984] 44 Facts on File No. 2262, Mar. 23, at 200-1G-2G (describing Iranian charges and U.S. statements on alleged use of chemical weapons by Iraq).

<sup>66</sup>See supra note 40 and accompanying text; [1985] 45 Facts on File No. 2235, Aug. 23, at 62-1F; Committee Print - War in the Gulf, supra note 55, at 5, 9.

<sup>67</sup>See [1986] 46 Facts on File, No. 2366, Mar. 28, at 1E-2G; Time, Mar. 3, 1986, at 50.

<sup>68</sup>See supra notes 55 and 67; see also Sick, supra note 40, at F4, cols. 1-5 (describing developments in Iranian strategy toward more thorough preparation, smaller probing attacks, and guerrilla tactics).

<sup>69</sup>See supra note 67.

<sup>70</sup>See N.Y. Times, May 18, 1986, at sec. 1, pt. 1, at 17, at col. 1.

<sup>71</sup>See Time Mag., Mar. 3, 1986, at 50.



The human cost of the war has been enormous. Estimates in mid-1985 put Iranian dead between 420,000 to 580,000 and Iraqi dead at 300,000.<sup>72</sup>

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<sup>72</sup>N.Y. Times, Sept. 23, 1985, A, at 4, col. 3. Losses have continued to be heavy for both sides into 1986, see Time Mag., Mar. 3, 1986, at 50.



### III. The Tanker War

#### A. The Role of Economic Warfare in the Iran-Iraq War

A significant feature of the Iran-Iraq War is the emphasis placed on economic targets. The purpose behind such attacks is to undermine the enemy's ability to finance the war.<sup>73</sup> The attractiveness of economic targets is heightened by the dependence of each belligerent on oil exports and the vulnerability of oil-related targets.<sup>74</sup> Iraq's marine and pipeline export facilities are vulnerable.<sup>75</sup> On the Iranian side, its marine export facilities, refineries, and logistical support facilities also provide tempting targets.<sup>76</sup>

From the first weeks of the war, these targets have been attacked.<sup>77</sup> The cost has been greatest for Iraq. Its export capability through the Gulf was shutdown and its overland routes hampered.<sup>78</sup> Consequently, Iraq's economy has suffered.<sup>79</sup> Conversely, Iran's economy suffered little during the early stages

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<sup>73</sup>Stauffer, Economic Warfare in the Gulf, American-Arab Affairs No. 14, Fall 1985, at 98. The tactics of furthering this objective include: interdiction of critical imports, destruction of oil export facilities; interruption of transit routes, and attacks on oil refineries. Id.

<sup>74</sup>Id. at 99-100, 103-04; see also Washington Post, Mar. 6, 1986, at A25 (asserting that the relative economic health of the belligerents will ultimately decide the outcome of the war).

<sup>75</sup>Id. at 100-01.

<sup>76</sup>Id. at 102-03.

<sup>77</sup>Id. at 103-04; see supra notes 62-66 and accompanying text.

<sup>78</sup>Stauffer, supra note 73, at 104-05; see supra note 77.

<sup>79</sup>See Washington Post, Mar. 6, 1986, at A25.





of the war.<sup>80</sup>

Starting in 1984, economic warfare began to escalate. Neutral merchant ships in the Persian Gulf became frequent targets. Iraq sought to cut-off Iran's oil trade which travels out the Persian Gulf. Iran has attempted to respond in kind, but to do so has had to target ships going to and from the various Gulf states.<sup>81</sup>

B. The Attacks on Persian Gulf Shipping

(1) Iraqi Practice

Iraq's war against Gulf shipping has occurred in two stages: first, attacks were conducted in the northern-most end of the Gulf near the ports of Bandar Khomeini and Bandar Manshahr.<sup>82</sup> During this stage (which lasted until February 1984), attacks outside the vicinity of these ports were few and incidental to attacks on other targets.<sup>83</sup> The second stage commenced with the blockade of Kharg Island whereupon Iraqi attacks spread out to include ships going to and from the Kharg Island facility.<sup>84</sup> (A partial list of the attacks on shipping from 1981 through

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<sup>80</sup>Iran's economy had already been damaged by the revolution and the socio-political make-up of the populace allowed Iran to adapt easier to the necessary economic sacrifices of the war. Stauffer, supra note 73, at 105-06.

<sup>81</sup>For a brief review of the early stages of the tanker war, see Stauffer, supra note 73, at 13-14; Danzinger, The Persian Gulf Tanker War, U.S. Naval Institute Proceedings, May 1985, at 160.

<sup>82</sup>Danzinger, supra note 81, at 161.

<sup>83</sup>Id.

<sup>84</sup>Id. at 162-63.



1984 is set out at Appendix I.)<sup>85</sup> Most Iraqi attacks have occurred inside a declared exclusion zone and against ships going to or from Iranian oil port facilities.<sup>86</sup> Overall, since 1984 attacks on shipping by Iraq have averaged one or two per week,<sup>87</sup> although this rate has not been maintained consistently.<sup>88</sup>

## (2) Iranian Practice

Iran has responded in kind to Iraqi attacks on its shipping. Concerted attacks by Iran began in 1984. However, because Iran has effectively shutdown Iraqi marine export facilities, Iran's only targets were related to other Gulf states' shipping activities, principally those of Kuwait and Saudi Arabia.<sup>89</sup>

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<sup>85</sup>Appendix I is taken from the Danzinger article, see id. at 164-67. Dr. Danzinger states that the information is taken from various news media and is not a exhaustive listing. For more examples of reported attacks by Iraq, see N.Y. Times, Jan. 12, 1985, sec. 1, at 4, col. 6; N.Y. Times, Jan. 21, 1985, sec. A, at 5, col. 2; N.Y. Times, Apr. 28, 1985, sec. 1, pt. 1, at 5, col. 2; N.Y. Times, Jul. 10, 1985, sec. A, at 5, col. 2; N.Y. Times, Dec. 25, 1985, sec. 1, at 7, col. 4; N.Y. Times, Jan. 20, 1986, sec. A, at 4, col. 5. The overall rate of attacks by Iraq has increased during the first half of 1986. N.Y. Times, May 18, 1986, sec. 1, pt. 1, at 17, col. 1.

<sup>86</sup>See Special Warning No. 67 (Appendix II) for the Iraqi exclusion zone. Some Iraqi attacks have occurred outside the zone, however, virtually all reported attacks subsequent to Feb. 1984, when the blockade was declared, have been on vessels engaged in lifting oil from Iranian ports. See Appendix I; Int'l Ass'n of Independent Tanker Owners (INTERTANKO), Iran-Iraq Conflict March 1984/1985 at 2, 8 [hereinafter cited as INTERTANKO] (industrial publication with limited circulation).

<sup>87</sup>Washington Post, Mar. 3, 1986, at A13.

<sup>88</sup>For instance, lulls in Iraqi attacks have occurred in October - November 1984 and in February 1985.

<sup>89</sup>See Stauffer, supra note 73, at 111; McLean's Mag., May 18, 1984, at 30-31. See also Appendix I (a partial listing of Iranian attacks -- taken from the article by Dr. Danzinger, supra note 81, at 164-67). Ships attacked include Greek, Liberian, Indian, Panamanian, Spanish, Kuwaiti, and Saudi Arabian.



Iranian attacks have not occurred within any defined war zone or incident to a blockade declared by Iran. Rather, Iran's attacks have occurred in territorial waters of Saudi Arabia and throughout the eastern and southern portions of the Gulf.<sup>90</sup> Iranian attacks have been justified by Iran as reprisals to Iraqi attacks rather than being part of a concerted effort to shutdown commerce which either directly or indirectly benefits Iraq's war effort.<sup>91</sup> Iran has also hoped to put pressure on the Gulf states who are generally supportive of Iraq.<sup>92</sup>

The tanker war has continued up to the present with alternating rounds of attacks by each side.<sup>93</sup>

A second aspect of the Iranian strategy in the Gulf has been directed against Iraqi economic interests -- this has been the interdiction, by visit, search, and capture, of cargoes carrying contraband to Iraq. This tactic, which began in 1984, has also continued to date.

In early June 1984, Iran declared a "stop and search zone"

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<sup>90</sup>See Associated Press (AP), May 18, 1984, International News, AM Cycle (reporting Saudi merchant vessel attacked in Saudi Arabia's territorial waters); Washington Post, Jun. 17, 1986, at A13; supra note 89.

<sup>91</sup>Associated Press (AP), May 18, 1984, International News, AM Cycle quoting Iran's Speaker of Parliament as saying that Iran will not "sit and watch the closure of its oil routes" -- Iran maintains that the Persian Gulf will be safe for all -- or for none; see McLean's Mag., May 28, 1984, at 30.

<sup>92</sup>See Stauffer, supra note 73, at 111.

<sup>93</sup>See N.Y. Times, May 18, 1984, sec. 1, pt. 1, at 17, col. 1; Washington Post, Jun. 17, 1986, at A13 (attacks continue to include Gulf state vessels as well as vessels from neutral states outside the Gulf).





in the vicinity of the Strait of Hormuz.<sup>94</sup> Iran's intent has been to intercept war-related materials going into Iraq and stop oil exports shipped on behalf of Iraq.<sup>95</sup> Iran has issued repeated warnings of its intent to stop ships suspected of carrying goods to or on behalf of Iraq.<sup>96</sup> Evidently, Iran has issued no contraband list. This tactic has been employed against various flag-states including French, American, and British vessels.<sup>97</sup>

The details of the visit and search operations are not available regarding many of the reported incidents. However, to the extent that the stopping of the USS President Taylor is illustrative of the practice, it appears that Iran is acting consistently with traditional procedures.<sup>98</sup> Merchant vessels are signaled to "heave to", a small boarding party (which includes an officer) embarks, where upon manifests and sample containers are inspected.<sup>99</sup> No injuries or damage have been reported.

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<sup>94</sup>N.Y. Times, Jun. 12, 1984, at sec. A, at 12, col. 3. Some neutral vessels were stopped before the declaration. Id.

<sup>95</sup>[1985] 45 Facts on File No. 2354, Dec. 31, 1985, at 971-3G-972-1D. For a report on Iranian efforts to stop oil exports, see Washington Post, Apr. 23, 1986, at A28; see also Stauffer, supra note 73, at 113 (assessing the Iranian visit and search tactic in light of the overall strategies of economic warfare in the conflict).

<sup>96</sup>See Washington Post, Jul. 15, 1985, at sec. 1 (Around the World); N.Y. Times, Jan. 13, 1986, sec. A, at 1, col. 6.

<sup>97</sup>See Washington Post, Nov. 22, 1985, at A25 (concerning an encounter between Iranian and French vessels); N.Y. Times, Jan. 13, 1986, sec. A, at 1, col. 6 (concerning the visit and search of the SS President Taylor); [1986] 46 Facts on File No. 2357, Jan. 24, 1986, at 30-1G (concerning a British flag vessel stopped in the Gulf of Oman). Other flag-states effected include Kuwait, Italy, West Germany, Denmark, Yugoslavia, Poland, and Japan. See N.Y. Times, Jan. 14, 1986, sec. A, at 1, col. 6.

<sup>98</sup>See N.Y. Times, Jan. 14, 1986, sec. A, at 1, col. 6 (providing an account of the USS President Taylor incident).

<sup>99</sup>Id.





Generally, the vessels have been released, however, some have diverted to Iranian ports.

C. The Exclusion Zones and the Blockade of Kharg Island

The Iraqi and Iranian Governments have made several public declarations regarding their intentions in the Gulf. These declarations have established -- as far as the Iraqis are concerned -- an exclusion zone and a blockade of Kharg Island.

A chronology of these declarations are set forth, below:<sup>100</sup>

On 22 September 1980, U.S. Defense Mapping Agency and Hydrographic Center (DMAHTC) issued Special Warning No. 48; which states, in part:

1. Mariners are warned of possible hostilities in the Persian Gulf area between Iraq and Iran. Iraq has reasserted national boundaries which include the Shatt Al-Arab estuary, the news media have reported in and near the Shatt Al-Arab. Merchant ships have reportedly been involved.

2. At 1608 GMT 22 September 1980 the Tehran Radio Domestic Service, in Persian, reported the following: Communique No. 17 of the Joint Staff of the Armed Forces of the Islamic Republic of Iran.

Bearing in mind the violations of the Iraqi armed forces, all waterways near the Iranian shores are hereby declared war zones. Iran will not allow any merchant ship to carry cargo to the Iraqi ports. Also, for the sake of the safety of shipping in the

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<sup>100</sup>With respect to Iraq's pronouncements, the terms "prohibited war zone," "restricted military zone," and "Gulf Exclusion Zone," and the like, are used interchangeably and refer to essentially the same thing. This chronology is taken from various special warnings to mariners obtained from the U.S. Defense Mapping Agency and Hydrographic Center (DMAHTC), Washington, D.C. The content and context of these warnings were verified in an interview on Feb. 3, 1986, with Mr. Steven Hall, Chief of the Notice to Mariners Div'n, DMAHTC. Where available, the source of information used by DMAHTC is indicated in the text. In addition to the quoted warnings, herein, there were other issuances by DMAHTC which revised the various coordinates provided by the Iraqi and Iranian Governments.



Persian Gulf, we announce that the following routes should be observed. After the ships have passed through Hormuz strait they should arrange their tour so that they pass 12 miles south of Abu-Musa Island and 12 miles away from Sirri Island and south of Jazirfh-Ye Qeys Lighthouse and 12 miles in the south of Kharg Island. The Islamic Republic of Iran will not accept any responsibility concerning those who violate this communique. (Signed) The Joint Staff of the Armed Forces of the Islamic Republic of Iran.

On 7 October 1980, DMAHTC issued Special Warning No. 50, which stated, in part, that "Iraq has stated that the area of the Persian Gulf north of 23-30N is a prohibited war zone."

On 16 August 1982, DMAHTC issued Special Warning No. 62, which stated:

1. Special Warning No. 53 regarding the Persian Gulf remains in effect except that the Iraqi government has expanded the restricted military zone as described below.
2. The Iraqi government has warned that it will attack all vessels appearing within a zone believed to be north and east of the line connecting the following points: (A) 29-30N 48-30E; (B) 29-25N 49-09E; (C) 28-23N 49-47E; (D) 28-23N 51-00E. The Iraqi government has further warned that all tankers docking at Kharg Island, regardless of nationality, are targets for the Iraqi Air Force.

On 24 November 1982, DMAHTC reported the following:

Iraqi Minister [sic] of Foreign Affairs issued formal notification to all diplomatic mission [sic] in Baghdad demarcating the Gulf Exclusion Zone. The Iraqi government has asked all companies and owners of oil tankers that their vessels will be subject to danger upon entering the exclusion zone described below. Iraq will accept no responsibility, legal or moral obligations, resulting from damage to vessels entering the exclusion zone. The exclusion zone is within the following four geographic coordinates: [repeats coordinates set out in Special Warning No. 62, above].<sup>101</sup>

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<sup>101</sup>DMAHTC authority: USINT BAGHDAD 3937 dtg 2410107 Nov. 82.



On 28 February 1984, the New York Times reported that Iraq has declared a blockade of Iran's Kharg Island -- quoting an Iraqi military communique speaking over Baghdad radio: "Today is the first day of a blockade that we have decided to impose [on Kharg Island] which we have already declared as a restricted military zone."<sup>102</sup>

A concise statement of existing war zone areas declared by Iran and Iraq is set out in DMAHTC Special Warning No. 67 issued on 20 September 1985 (Appendix II).

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<sup>102</sup>N.Y. Times, Feb. 28, 1984, sec. A, at 1, col. 5.





#### IV. An Analysis of the Tanker War

##### A. The Traditional Law of Contraband Control, Visit and Search, Blockades, and Exclusion Zones

Whereas land warfare is directed at enemy armies and territory, navies focus on the: "[D]efeate of the enemy navy...destruction of enemy coast fortifications, and of maritime...establishments on the enemy coast; cutting off intercourse with the enemy coast; prevention of carriage of contraband...[and] all kinds of support to military operation on land...."<sup>103</sup> The law of sea warfare seeks to balance the rights of belligerents and neutrals in the context of these objectives.

The attacks on neutral shipping and Iran's visit and search operations relate to some of these objectives: preventing neutral commerce with an enemy, contraband control, blockades, and establishing exclusion zones.

##### (1) Preventing Commerce with an Enemy and the Status of Nonparticipants

Stopping commerce with the enemy effects "all imports to or exports from enemy territory by sea...without regard to whether this trade is carried in enemy or neutral vessels...."<sup>104</sup> The neutral claims to freedom of commerce conflict with the belligerent

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<sup>103</sup>2 Oppenheim-Lauterpacht, supra note 4, at sec. 173.

<sup>104</sup>Law of Naval Warfare, supra note 5, at sec. 630 n. 16.



claims to prevent assistance for the enemy.<sup>105</sup> Reconciling these claims has been difficult. Over the years the claims of neutrals have given way to those of belligerents.<sup>106</sup> Neutral ships and goods became subject to capture and condemnation if they violated belligerent rights.<sup>107</sup>

The relationship between neutrals and belligerents entails not only the objects of sea warfare but also the characteristics of neutrality. Neutrality is the "attitude of impartiality adopted by third States toward belligerents and recognized by belligerents, such attitudes creating rights and duties between the impartial States and the belligerents."<sup>108</sup> Traditionally, neutrals have had to abstain from providing assistance to the belligerents and to prevent belligerents from using neutral resources or territory to their advantage.<sup>109</sup> Abstention includes the duty not to supply (either directly or indirectly) arms, ammunition, vessels, or other military assistance. Strict adherence to this doctrine can result in an advantage for one belligerent

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<sup>105</sup>See R. Tucker, The Law of War and Neutrality at Sea, in U.S. Naval War College, Int'l Law Studies, 1955 182 (1957).

<sup>106</sup>See Rousseau, Droit International Public 700-01 (1953).

<sup>107</sup>See Studies, supra note 10, at 103.

<sup>108</sup>2 Oppenheim-Lauterpacht, supra note 4, at sec. 293.

<sup>109</sup>Id. at secs. 294-95, 313-14.



by altering the status quo in the military or economic balance.<sup>110</sup> In modern limited conflicts this has been accentuated by increased economic interdependence and reliance on other states for obtaining arms. Consequently, there has been a trend away from strict adherence to traditional neutral prescriptions and towards various or relative degrees of neutrality by nonparticipating states.<sup>111</sup>

Under the traditional rules, belligerents treated neutrals in accordance with their impartiality and did not interfere with neutral activities which did not violate the neutral's obligations of abstention and prevention.<sup>112</sup> However, belligerents could employ methods such as blockades and visit, search, and capture procedures to prevent illicit trade with the enemy.<sup>113</sup>

The traditional rules surrounding neutrality were formulated largely in the pre-twentieth century era and have been drastically affected by twentieth century events.

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<sup>110</sup>Norton, Between Ideology and the Reality: The Shadow of the Law of Neutrality, 17 Harv. Int'l L. J. 249, 297-302 (1976) (states often describe their neutral status as "qualified neutrality," "non-belligerency," "neo-neutrality," and the like.) Neutrals are sometimes referred to as "nonparticipants," that is, not engaged in actual hostilities --- but whose activities or policies may benefit one or the other side. In this analysis, third parties to the Iran-Iraq conflict are referred to as "neutrals" -- this does not necessarily mean that such states are strictly neutral, rather it refers to neutrality in the broader sense as including all states which are nonparticipants.

<sup>111</sup>See id. at 278; Address by Attorney General R.H. Jackson Before Inter-American Bar Assoc., Havana, Mar. 27, 1941, 35 Amer. J. Int'l L. 348 (1941), portions reprinted in W. Bishop International Law 1052-55 (3<sup>d</sup> ed. 1962).

<sup>112</sup>Oppenheim-Lauterpacht, supra note 4, at sec. 315.

<sup>113</sup>Id. at sec. 319.



The international legal order established under the United Nations has undermined the ideological basis for neutrality by outlawing all war except that waged either in collective or individual self-defense.<sup>114</sup> Under the U.N. Charter, an aggressor is to be designated by the Security Council which may authorize collective action.<sup>115</sup> States which would normally be neutral become involved in the U.N.-sponsored action. Neutrality becomes an exception rather than a rule for states outside the initial hostilities. In practice, however, the Security Council has not designated aggressors and relative positions of neutrality have continued in fact, if not by formal declaration.<sup>116</sup>

## (2) Contraband Control

The law of armed conflict allows belligerents to characterize goods which can be prevented from being imported to an enemy. Traditionally, imports were categorized as absolute contraband, conditional contraband, or free goods.<sup>117</sup> Contraband is cargo destined for enemy use even though transported through neutral territory.<sup>118</sup> The modern trend has been to expand the categories

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<sup>114</sup>See Norton, supra note 110, at 249-50; U.N. Charter arts. 2(4), 51.

<sup>115</sup>U.N. Charter arts. 39, 41-42.

<sup>116</sup>See Norton, supra note 110, at 249-78 (discussing continued reliance on neutrality doctrines despite the U.N. Charter and reviewing neutrality doctrines in post-World War II conflicts).

<sup>117</sup>See M. McDougal & F. Feliciano, supra note 4, at 481-88; see also 2 D. O'Connell, The International Law of the Sea 1142-44 (1979) (discussing basic contraband doctrine).

<sup>118</sup>2 D. O'Connell, supra note 117, at 1144-47 (discussing the doctrines of enemy destination and continuous voyage).





of contraband to include nearly all commodities.<sup>119</sup> This was the case during the two World Wars.<sup>120</sup> Professor O'Connell explains the reason and importance of this trend:

The expansion of the list of contraband [has become] a matter of relative circumstance....[T]he practice in general war being to mobilize all resources, commodities became subject to government direction irrespective of their [military and civilian] utility...

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While the condition of modern total war obviously undermined the application of the traditional doctrine of contraband, the doctrine itself is not thereby annulled. The central principle [remains] the actual commitment of goods to the prosecution of war, and it is obvious that the principle is differentially applicable in different circumstances.<sup>121</sup>

Traditional law also allowed belligerents to prevent exports from leaving enemy territory in order to stop the inflow of foreign currency.<sup>122</sup>

### (3) Visit and Search Procedure

One method of contraband control is stopping and visiting neutral vessels suspected of carrying contraband.<sup>123</sup> Visit and search is the physical inspection by a belligerent of neutral vessels for determining its content, nationality, origin, and destination. This procedure may be carried out selectively

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<sup>119</sup>Id. at 1143-44.

<sup>120</sup>Id.

<sup>121</sup>Id. at 1144.

<sup>122</sup>M. McDougal & F. Feliciano, supra note 6, at 487-88.

<sup>123</sup>Id. at 88; see also Law of Naval Warfare, supra note 5, at sec. 502 (setting out procedures for visit and search by U.S. Navy vessels).



on ships at sea outside neutral jurisdiction.<sup>124</sup> If contraband is found, or if a ship resists, it may be seized and brought to port for disposition.<sup>125</sup> Visit and search is essentially a peaceful means of interdicting neutral commerce; implicitly it proscribes destroying neutral vessels under normal circumstances.<sup>126</sup>

Customary rules of visit and search are recognized in several conventional formulations. The unratified Naval Declaration of London 1909 implicitly recognizes the right of visit and search by providing rules on contraband control and blockade.<sup>127</sup> The unratified Washington Treaty of 1922 explicitly recognizes the right of visit and search and the concomittant obligation not to attack a merchant vessel unless it refuses to submit to a visit and search.<sup>128</sup>

Visit and search procedures were used in exceptional circumstances during World War II. Post-World War II experiences include Egyptian visits and searches in the 1948 and 1956 Arab-

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<sup>124</sup>Whether visit and search may be carried out on neutral vessels under convoy of warships of the same nationality is unsettled. See Law of Naval Warfare, supra note 5, at sec. 502, n.10, at 5-9 -- 5-10.

<sup>125</sup>See 2 Oppenheim-Lauterpacht, supra note 4, at secs. 422, 429; see generally Harvard Draft Convention on the Rights and Duties of Neutral Powers in Naval and Aerial War, art. 54, reprinted in 33 Am. J. Int'l. L. Supp. 535-36 (1939) (detailing traditional visit and search procedures).

<sup>126</sup>See 2 D. O'Connell, supra note 117, at 1115-16 (setting forth the traditional basis for destroying neutral vessels, i.e., in emergencies where capture is infeasible).

<sup>127</sup>See Conference of London 1909 reprinted in The Law of Armed Conflicts (Documents) No. 56, at 623-36, (D. Schindler & J. Toman eds. 2<sup>d</sup> rev. ed. 1981) [hereinafter cited as Schindler & Toman].

<sup>128</sup>See Washington Treaty of 1922, art. 1, 43 Stat. 1655, T.S. 671 reprinted in, id. No. 58, at 657-59.



Israeli Wars on ships passing through the Suez Canal.<sup>129</sup> These procedures were also used in the Indo-Pakistani War of 1965.<sup>130</sup> In both wars customary legal prescriptions were recognized.<sup>131</sup> Practical obstacles to visit and search include the need for an adequate surface forces to carry out the operation and the vulnerability of such forces to counterattack.<sup>132</sup>

#### (4) Blockade

A more comprehensive means of preventing economic activity with an enemy is the blockade, which is:

[T]he isolation, by means of blockading forces and the observance of certain rules of law, of a port or line of coast belonging to or occupied by the enemy...so that the enemy's trade [is]...impeded since shipping in the blockaded area cannot approach the coast....Blockade is a legal institution peculiar to naval warfare....Although in practice blockade...is in the first instance aimed at neutrals, the ultimate purpose is to inflict damage upon the enemy.<sup>133</sup>

Blockades are intended to isolate an enemy economically, i.e., to prevent imports or exports from reaching or leaving enemy territory.<sup>134</sup>

The blockade is part of the customary law, but is also reflected in convention: the Declaration of Paris 1856 recognizes blockades and requires that they be effective in order to be

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<sup>129</sup>See Norton, supra note 110, at 304-05.

<sup>130</sup>Id. at 305.

<sup>131</sup>Id.

<sup>132</sup>Williams, Neutrality in Modern Armed Conflicts: A Survey of the Developing Law, 90 Mil.L.R. 9, 43 (1980).

<sup>133</sup>Castren, The Present Law of War and Neutrality 293-94 (1954), quoted in 10 M. Whiteman, Digest of International Law 861 (1973).

<sup>134</sup>R. Tucker, supra note 105, at 284-85.





binding;<sup>135</sup> the Declaration of London 1909 provides specific limitations on enforcing blockades.<sup>136</sup>

Customary law imposes certain requirements in establishing and maintaining a blockade, which include: formal declaration of blockade by competent authority serving notice on neutrals of the location, limits, and duration of the blockade; it may apply only to enemy-owned or occupied positions; it must be effective; and it must be impartially enforced.<sup>137</sup>

Pre-twentieth century blockades were generally enforced by surface warships operating close-in to the coast.<sup>138</sup> Blockades have been sometimes maintained by other means, e.g., by mines, coastal artillery, aircraft, and submarines, which were not illegal per se, but require adherence to the other established rules such as notice, peaceful stoppage, capture, and condemnation.<sup>139</sup> Accordingly, these auxiliary methods were employed only to augment enforcement by surface warships.<sup>140</sup>

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<sup>135</sup>Declaration of Paris 1856, reprinted in Schindler & Toman, supra note 127, No. 48, at 567-69.

<sup>136</sup>Naval Declaration of London 1909, ch. 1., supra note 127, at 625-27.

<sup>137</sup>See M. McDougal & F. Feliciano, supra note 6, at 490-91; Law of Naval Warfare, supra note 5, at sec. 632.

<sup>138</sup>See Mallison & Mallison, A Survey of the International Law of Blockades in U.S. Naval Institute Proceedings, Feb. 1976, at 44, 46.

<sup>139</sup>See M. McDougal & F. Feliciano, supra note 6, at 478.

<sup>140</sup>See Castren, The Present Law of War and Neutrality 300-01 (1954) quoted in 10 M. Whiteman, supra note 133, at 865; see also 2 Oppenheim-Lauterpacht, supra note 4, at sec. 380b (stating that aircraft alone cannot enforce a blockade).



Neutral ships breaching a blockade are subject to capture and condemnation as prizes of war.<sup>141</sup> Neutral vessels may not be destroyed unless the capturing warship is endangered and then only if all persons and papers on board are placed in safety.<sup>142</sup> These rules are refined in the London Treaty of 1930 which provides: "[E]xcept in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety."<sup>143</sup>

During the World Wars, blockades took on a new form. As surface force weaponry, air power, and submarines proliferated, modern warfare necessitated modification of traditional blockade practices. The Allies in both wars took advantage of their surface seapower by instituting long-distance blockades.<sup>144</sup> Germany, on the other hand, sought similar objectives through

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<sup>141</sup>H. Smith, The Law and Custom of the Sea 143 (3<sup>d</sup> ed. 1959), quoted in 10 M. Whiteman, supra note 133, at 862; Naval Conference of London 1909, ch. 1, supra note 127, at 625-27.

<sup>142</sup>See Washington Treaty of 1922, art. 1, supra note 128, at 657-58; Naval Conference of London 1909, arts. 48-54, supra note 127, at 632-33.

<sup>143</sup>See London Treaty of 1930, art. 22(2), 46 Stat. 2858, T.S. 830, reprinted in Schindler & Toman, supra note 127, No. 59, at 661-62; see also 1936 London Protocol, 13 Stat. 1363, T.S. 919, reprinted in Documents on the Laws of War 147-50 (A. Roberts & R. Guelff eds. 1982) (carrying over the rules on destroying merchant vessels past expiration of the London Treaty of 1930). In modern practice this has not been extended to neutral ships integrated into the enemy war effort -- such ships are subject to the same treatment as enemy merchant vessels. See Studies, supra note 10, at 122-32.

<sup>144</sup>See infra pp. 37-40.



the use of exclusion zones.<sup>145</sup>

(5) Exclusion Zones<sup>146</sup>

Exclusion zones are a twentieth century development; like blockades, they provide a means of controlling commercial relations between an enemy and neutral states. These zones are high seas areas made subject to a degree of control by a belligerent in which neutral shipping is prevented from operating freely.<sup>147</sup> Such zones were widely used in the World Wars as part of comprehensive economic strategies.

In World War I, Great Britain declared the entire North Sea a military area and enforced it with minefields. Although lanes of safe passage were provided for interneutral trade, damage was still inflicted on neutral ships.<sup>148</sup>

Germany's declared war zones around the British Isles.<sup>149</sup> Germany enforced the zone with its U-Boats and, at first, attempted to restrict its attacks to enemy merchant vessels. However,

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<sup>145</sup>See infra notes 149-50, 152, 155 and accompanying text.

<sup>146</sup>The terms "exclusion zones," and "war zones" refer to the same basic concept. These terms are used herein interchangeably.

<sup>147</sup>Such zones are similar to operational zones and defensive zones. Operational zones are high seas areas in which hostilities are occurring or are imminent. Their purpose is to ward off neutral vessels which may interfere with hostilities. A defensive zone is belligerent control of high seas areas adjacent to its territorial sea. These zones ensure the security of the belligerent's territory. These methods are not directed against neutrals per se, rather they ensure the efficient employment of naval operations and enhance coastal defenses. See R. Tucker, supra note 105, at 299-301.

<sup>148</sup>See 2 Oppenheim-Lauterpacht, supra note 4, at sec. 319a; 2 D. O'Connell, supra note 117, at 1109.

<sup>149</sup>2 Oppenheim-Lauterpacht, supra note 4, at sec. 319a.



practical difficulties in distinguishing ships and exposing the submarines to counterattack if it abided by traditional prescriptions led Germany to embark upon the so-called strategy of unrestricted submarine warfare against all merchant shipping in the war zones.<sup>150</sup>

In World War II, the pattern repeated itself. The Allies invoked comprehensive economic warfare measures in the form of a long-distance blockade and the navicert system.<sup>151</sup> Germany declared large war zones around Great Britain -- citing the aggressive tactic of the Allies, Germany declared that all neutral merchant vessels within the zones were subject to attack.<sup>152</sup>

In the Pacific theatre the United States also declared war zones in order to specify areas in which unrestricted warfare would be carried out against enemy merchant vessels incorporated into the war effort. However, as a practical matter, there was no neutral merchant vessel involvement.<sup>153</sup>

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<sup>150</sup>Studies, supra note 10, at 62-65.

<sup>151</sup>Id. at 81, 113, 131-32.

<sup>152</sup>Id. at 75-76. Great Britain also declared a war zone in the Skagerrak, although neutral ships were not attacked in the zone. Id. at 86-87.

<sup>153</sup>Id. at 87-90.





B. Developments in the Law of Blockade and Exclusion Zones During the World Wars

Sea warfare changed dramatically during the two World Wars. As discussed above, large operational war zones, long-distance blockades, submarine warfare, and comprehensive trade embargoes developed in the twentieth century. These developments have affected the law of armed conflict and provide a basis for analyzing the legality of the Iraqi and Iranian practices.

The methods used by the Allies and Germans reflect the realities of modern naval warfare. The British used large surface forces to impose a long-distance blockade against Germany, thus avoiding German submarine attacks which could defend against a close-in blockade.<sup>154</sup> The Germans, lacking sufficient surface forces, used submarines to attack shipping in a war zone around Great Britain.<sup>155</sup> Each strategy avoided the defensive abilities of the adversary.

Both strategies were directed at not only enemy vessels and property, but also neutral vessels and property used to support the enemy's war effort. According to Professor Mallison, the widespread use of these methods affirmed the notion that complete interdiction of "commercial intercourse between the enemy belligerent and neutrals is now widely accepted as lawful in general war."<sup>156</sup> Professor Mallison states the legal con-

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<sup>154</sup>Id. at 60.

<sup>155</sup>Id. at 59-60.

<sup>156</sup>Id. at 61 (footnote omitted) and n.33.



sequences of this: "[The lawfulness of interdicting all neutral commerce with the enemy] reflects the actual economic warfare techniques of the World Wars and changed the focus of legal analysis from the objective itself to the various methods of achieving it."<sup>157</sup>

The long-distance blockades and war zones of the two World Wars were, at the time, justified by the claimants as reprisals for the other's breach of traditional limitations on economic and sea warfare.<sup>158</sup> However, the fundamental changes in the technology, the increased importance of economic warfare objectives, and the widespread disregard of traditional prescriptions, raises the question of whether long-distance blockades or war zones may be employed in this manner as a claim of right.

(1) The Long-Distance Blockade

The impact of the long-distance blockade on the law of blockade is not settled. Some writers view it as a latent development in the law through repeated reprisal practices thus suggesting a claim of right. For instance, Oppenheim states:

[I]t is...clear that in so far as modern warfare has assumed a predominately economic character, some of the rules of the accepted law of blockade have become inapplicable in the changed conditions of naval war... and that unless altered by agreement they are likely to be honoured more in the breach than in the observance. Thus viewed, [the long-distance blockade] regularly and uniformly repeated in successive wars in the form

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<sup>157</sup>Studies, supra note 10, at 61.

<sup>158</sup>See 2 Oppenheim-Lauterpacht, supra note 4, at secs. 319a, 390a, 390c.



of reprisals and aiming at the economic isolation of the opposing belligerent must be regarded as the development of the latent principle of the law of blockade, namely that the belligerent who possesses the effective command of the sea is entitled to deprive his opponent of the use thereof for the purpose either of navigation by his own vessels or of conveying on neutral vessels such goods as are destined to or originate from him.<sup>159</sup>

Other writers concede that a long-distance blockade may be a legitimate reprisal, but question its lawfulness as a claim of right.<sup>160</sup>

Professor O'Connell points out the confusion and controversial state of the law:

The practice during the two World Wars has left the law of blockade devoid of most of its traditional characteristics, so that its present applicability and content are questionable. Close blockade...was made obsolete by long-range coast defense, torpedo boats, and minefields....The notion of long-distance blockade accommodated [the need]...to control strategic commodities, their price mechanisms and the credit to gain access to them.

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The question is whether [the technological, social, and commercial changes of modern-day warfare and commerce] have wrought a fundamental change in the law of blockade.

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The efforts made to justify long-distance blockade during both World Wars on the doctrine of reprisals indicate a want of assurance about the elasticity of the law of blockade....<sup>161</sup>

Professor O'Connell concludes that since long-distance blockades were not at the time justified as claims of right and were reliant

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<sup>159</sup>Id. at sec. 390c.

<sup>160</sup>See R. Tucker, supra note 105, at 307; 2 D. O'Connell, supra note 117, at 1154-55.

<sup>161</sup>2 D. O'Connell, supra note 117, at 1154.





on additional administrative controls, it cannot be concluded that customary prescriptions have changed. Moreover, he asserts that their relevance may be greater in the context of limited warfare since

[T]he theory of self-defense which underlies the concept of [limited war since 1945] tends to insulate the high seas and neutral shipping therein from the state of hostilities, if not absolutely, then certainly to a much greater extent than the conditions of general war. It is unlikely that the international community would tolerate interference with neutral shipping....[This would be] contrary to the United Nations Charter.<sup>162</sup>

Professor Tucker also stresses the continued vitality of at least part of the customary blockade prescriptions. He admits that these prescriptions were largely ignored during the World Wars, and that blockades now encompass contraband of broader definition, nevertheless the requirement of effectiveness and the allowable consequence for breaching a blockade remain unchanged -- that is, liability to seizure, but not destruction.<sup>163</sup>

Since World War II there have been several instances in which blockades have been declared as part of an economic warfare strategy. However, these precedents provide little guidance on the status of the law or for this analysis since the facts are not sufficiently analogous to the Iran-Iraq situation. They do, however, illustrate the continued value and use of embargo strategies in limited warfare. A brief discussion of some of these experiences is set forth, below.

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<sup>162</sup>Id. at 1155-56.

<sup>163</sup>See R. Tucker, supra note 105, at 316-17.



In the Korean War, U.N. forces imposed a close-in blockade on North Korea which was enforced by surface warships.<sup>164</sup> The blockade required a large number of ships and was difficult to enforce.<sup>165</sup> The economic restrictions imposed on North Korea were comprehensive and included fishing along its coasts.<sup>166</sup>

During the Cuban missile crisis, the United States used a special purpose blockade. It was devised to interdict the shipment of strategic weapons from the Soviet Union to Cuba.<sup>167</sup> This blockade did not precede or follow actual hostilities.

There were no declared blockades during the Vietnam War. However, U.S./South Vietnamese tactics were analogous to blockade.<sup>168</sup> Operation Market Time, begun in 1965, was designed to prevent infiltration of North Vietnamese forces into South Vietnam.<sup>169</sup> Surface craft searched, captured or destroyed enemy vessels.<sup>170</sup> This operation was limited to the territorial waters of South Vietnam; high seas traffic was unimpeded.<sup>171</sup>

The mining of North Vietnam's ports in 1972 is more closely akin to a traditional blockade. Its geographic limits were the territorial waters of the enemy and its purpose limited

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<sup>164</sup>See M. Cagle & F. Manson, The Sea War in Korea 281 (1957).

<sup>165</sup>Id. at 283.

<sup>166</sup>Id. at 296-97.

<sup>167</sup>See generally Mallison & Mallison, supra note 138, at 50; Mallison & Mallison, Limited Naval Blockade or Quarantine - Interdiction: National and Collective Defense Claims Valid Under International Law, 31 Geo. Wash. L. Rev. 335-98 (1962) (providing a detailed account of the Cuban missile crisis).

<sup>168</sup>Mallison & Mallison, supra note 138, at 50.

<sup>169</sup>Id.

<sup>170</sup>Id.

<sup>171</sup>Id.



to interdicting seaborne supplies.<sup>172</sup> This was a functional equivalent to blockade and could be justified accordingly.<sup>173</sup>

There was also a traditional close-in blockade of Eilat and the Gulf and Aqaba by Egypt against Israel in 1967.<sup>174</sup> Egypt also imposed a blockade during the hostilities of 1973 when it closed access to Israel from the southern end of the Red Sea at Bab al Mandeb.<sup>175</sup> This tactic paralleled the practices of World War II since it occurred a long distance from Israel's ports.<sup>176</sup>

Attacks on shipping occurred during the short-lived 1971 Indo-Pakistani conflict. The Indians attacked neutral shipping on the high seas in an effort to blockade the port of Karachi. Reports at the time indicated that India had proclaimed a blockade, but at least one commentator has suggested that no blockade was formally established and the attacks on international shipping were highly questionable from a legal standpoint.<sup>177</sup> Since the war ended quickly, no pattern of conduct or organized response by the international community developed.<sup>178</sup>

In the Falkland Islands War, Great Britain initially declared a Maritime Exclusion Zone around the Falklands in which Argentine warships were declared at risk. Later, Great Britain declared

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<sup>172</sup>Id. at 51.

<sup>173</sup>Id.

<sup>174</sup>Id.

<sup>175</sup>Id.

<sup>176</sup>Id.

<sup>177</sup>See 2 D. O'Connell, supra note 117, at 1099; D. O'Connell, The Influence of Law on Seapower 129-39 (1975).

<sup>178</sup>See supra note 177.



a Total Exclusion Zone in which any ships operating in the zone and in support of the Argentinians were at risk.<sup>179</sup> This was self-defensive in purpose; it was not directed against neutral shipping, although the British Government referred to it as a blockade (inferring that, if necessary, neutrals would be subject to attack).<sup>180</sup> Notwithstanding this characterization, there were no attacks on neutral trade.

These examples illustrate that economic warfare, including blockade procedures, can be strategically and tactically useful in limited warfare. They illustrate too that blockades in limited wars generally do not follow traditional formulations: close-in blockades (such as that used against North Korea) have been used, with some difficulty, but special purpose blockades, blockades enforced by mining, attacks on international shipping, and long-distance blockades, have also been employed in the post-World War II era.

## (2) Exclusion Zones

After World War I, there was clear international sentiment that Germany's use of submarines against neutral shipping was unlawful -- submarines were subject to the same restrictions as surface vessels vis-a-vis treatment of neutral vessels.

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<sup>179</sup>See 2 D. O'Connell, supra note 117, at 1111; see also Levie, The Falklands Crisis and the Law of War in The Falklands War 64-66 (A. Coll & A. Arend eds. 1985) (providing a detailed summary of the British exclusion zone).

<sup>180</sup>See 2 D. O'Connell, supra note 117, at 1111 nn.67, 69, 1155.





Accordingly, during the interwar years there were efforts to modify customary prescriptions to specifically include submarines.<sup>181</sup>

Germany's use of exclusion zones and submarines, during World War II (which repeated the pattern of World War I) left commentators at odds over the legal status of such operations.

The orthodox view -- and perhaps the weight of opinion -- maintains that indiscriminate attack on neutral vessels within prescribed exclusion zones remains unlawful, except perhaps as a reprisal.<sup>182</sup> Professor Tucker, for example, referring to exclusion zones of the World Wars, states:

[I]t does not appear possible to assert that -- apart from reprisal -- belligerents have at present the right to restrict the movement of neutral vessels within vast tracts of the open seas merely by proclaiming that these areas have been rendered dangerous -- in one form or another -- to neutral shipping.<sup>183</sup>

Even if done in reprisal such zones Professor Tucker asserts that belligerents must provide avenues of safe passage for neutrals.<sup>184</sup>

A differing assessment of exclusion zones and unrestricted warfare against merchant vessels is made by Professor Mallison, who states that Germany's methods may be justified as a reprisal,

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<sup>181</sup>See D. O'Connell, supra note 177, at 47-48.

<sup>182</sup>See, e.g., R. Tucker, supra note 105, at 302.

<sup>183</sup>Id. at 305; see also C. Colombos, International Law of the Sea sec. 857 (6<sup>th</sup> rev. ed. 1967) (discussing Germany's failure to adhere to customary prescriptions and the ineffectiveness of its war zone strategy); 2 Oppenheim-Lauterpacht, supra note 4, at sec. 319a (maintaining that war zones -- of the sort employed by Germany are legitimate as a claim of right only as between belligerents -- neutrals may be made the objects of such tactics only as part of a lawful reprisal, and then only to the extent reasonable under the circumstances).

<sup>184</sup>R. Tucker, supra note 105, at 305.



but also as requiring an adaptation of old rules to new methods in the same way that blockade rules were adapted to meet the contingencies of the long-distance blockade.<sup>185</sup> In his view, the legality of German practices must be assessed, in part, on the basis of the legitimacy of the object sought. In the context of the World Wars, complete interdiction of economic activity between the enemy and neutrals became a widely accepted practice.<sup>186</sup> Enemy merchant ships participating in the war effort became lawful targets because of their economic value and defensive capabilities;<sup>187</sup> neutral merchant ships engaged in the same activities as enemy ships were accorded similar treatment.<sup>188</sup>

Germany's warfare against neutral shipping developed out of the technological changes in weaponry and comprehensive economic objectives. The operational capabilities and limitations on submarines (which were Germany's strength) and the countervailing defenses inherent in large surface and air forces, necessitates a reassessment of the law -- just as the strategic necessity of long-distance blockades necessitates juridical modifications.<sup>189</sup>

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<sup>185</sup>See Studies, supra note 10, at 65-71. A similar assessment presumably applies to Germany's war zone practices of World War II, see id. at 78. See also 2 Oppenheim-Lauterpacht, supra note 4, at 390c.

<sup>186</sup>Studies, supra note 10, at 61.

<sup>187</sup>Id. at 106-23.

<sup>188</sup>Id. at 129-30, 132. As a practical matter, most if not all shipping transiting the German-declared zones were functionally integrated into the Allied war effort, either because of political affiliation with the British or as product of the administrative controls which attended the Allied long-distance blockades.

<sup>189</sup>Id. at 69-71.



Professor Mallison points out the relative effectiveness and efficiency of Germany's tactics and the initial attempts to abide by traditional rules regarding neutrals.<sup>190</sup> He also compares the destructiveness of submarine warfare to that of surface forces:

The ultimate sanction applied to merchant vessels which failed to acquiesce in the intermediate sanctions and persisted in attempting to run the blockade was gunfire....The refusal by a merchant ship to comply with that warning involved in a proclaimed submarine operational area,...may be said to be tantamount to persistent refusal to stop....[T]here is no reason why torpedo attack without further warning should be regarded as more destructive of neutral human and material values than gunfire from surface war-ships.<sup>191</sup>

In addition, Germany's exclusion zones were reasonable in light of their military effectiveness in interdicting commerce and in their minimization of destruction by giving clear notice to neutrals to stay out of certain areas.<sup>192</sup> These conditions, coupled with the value of neutral trade to Great Britain's war effort, leads Professor Mallison to conclude that Germany's practices were lawful as a claim of right.<sup>193</sup>

After World War II, the International Military Tribunal at Nuremburg indicted Admiral Donitz for, inter alia, "waging unrestricted submarine warfare contrary to the 1936 London

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<sup>190</sup>Id. at 72-73.

<sup>191</sup>Id. at 73.

<sup>192</sup>Id.

<sup>193</sup>See id. at 74. Professor Mallison's conclusion applies also to the German war zone strategy of World War II. See id. at 76.





Protocol."<sup>194</sup> The Tribunal did not find him guilty of attacking British armed merchant ships, but did convict him of conducting unrestricted warfare against neutral ships. The rationale was the customary requirements for visit and search and destruction only upon placing crew, passengers, and ship's papers in a place of safety.<sup>195</sup> Additionally, the Tribunal apparently considered Germany's war zone illegal since it was not effectively enforced.<sup>196</sup>

The Tribunal's decision is criticized by Professor Mallison as overly narrow and mechanical in its interpretation of the law and in its conclusion that no exception for operational areas was intended in the conventional formulations of the interwar years.<sup>197</sup>

(3) An Evaluation of the Law Concerning Blockades and Exclusion Zones -- Belligerent versus Neutral Claims

When and to what extent should traditional or customary rules of law give way to the emerging practices of states? As methods and objectives of warfare evolve, a degree of tension between existing rules and the new realities of war is inevitable. There must be a balance between conserving customary rules which

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<sup>194</sup>Id. at 77; 1 International Military Tribunal (I.M.T.) 311 (1947).

<sup>195</sup>See 1 I.M.T. 312-13, discussed in Studies, supra note 10, at 79-80, 115-22.

<sup>196</sup>See 1 I.M.T. 332-33, discussed in Studies, supra note 10, at 82-84. Professor Mallison refutes this conclusion, arguing that the German enforcement was effective. Studies, supra note 10, at 77.

<sup>197</sup>See Studies, supra note 10, at 80.



uphold the principles of military necessity and humanity and maintain the relevance of law to developing technological and strategic realities. If changes are made too easily, states will freely embark upon any form of destruction perceived as useful and fashion an emergent norm as justification; if the law remains unresponsive to reasonable adaptations to new methods, states may justify their actions as lawful reprisals or simply ignore the law altogether.

Applying these issues to modern embargo practices, the conclusions of Professors McDougal and Feliciano are noteworthy:

The embargo measures repetitively applied in the two world wars realistically involve something more than the exceptional, emergency responses to a violation of an unquestioned authoritative prescription which the conception of 'reprisals' ordinarily connotes. The nearly universal nonobservance in two global wars of certain nineteenth century prescriptions which these measures reflect strongly suggest, on the contrary, the clear emergence and crystallization of the particular expectations of uniformities and rightness in decision commonly called law -- or, in other words, in growth and development of new patterns of customary law.<sup>198</sup>

With respect to blockades, military technology has revolutionized the strategy. Aircraft and missiles make close-in blockades dangerous -- on the other hand, mines, submarines, and sophisticated surveillance and fast aircraft make long-distance blockades effective and less risky.<sup>199</sup>

With respect to exclusion zones and unrestricted warfare against neutral commerce in such zones a similar argument can

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<sup>198</sup>M. McDougal & F. Feliciano, supra note 6, at 479 (footnotes omitted).

<sup>199</sup>See Williams, supra note 132, at 44.



be made. Depending on the relative strengths of the opposing forces, exclusion zones may -- as Professor Mallison points out -- provide a logical and reasonable alternative for isolating the enemy economically:

[In a future (non-nuclear) general war] it is realistic to expect claims to establish submarine operational areas because some major states do not have the capacity to conduct independent naval operations on the high seas except through the extensive use of submarines.<sup>200</sup>

As with long-distance blockades, widespread use of the exclusion zone during the World Wars -- even though justified as reprisals -- signifies more than an aberration from customary law, rather it is a development in the law based on the effective use of new weapons and the expanded scope of economic warfare.

One result of this development is less freedom for neutrals navigating near hostilities. Depending on the circumstances, belligerents may seek to stop all commerce with the enemy. The methods used may necessarily "restrict greatly all neutral trade in the geographic proximity of the opposing belligerent."<sup>201</sup> Professor O'Connell discusses the resulting balance between neutral and belligerent interests in the context of emerging norms of international law:

Neutrality is thus not an absolute right for if it were it would negate belligerency. An accommodation is to be arrived at between the two conditions simply because of the coexistence of neutral and belligerent nations in community, and the accommodation will eventually

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<sup>200</sup>Studies, supra note 10, at 91 (footnotes omitted).  
<sup>201</sup>Williams, supra note 132, at 45.



reflect the technological and commercial factors of the moment, and is not a static condition.<sup>202</sup>

In summary, the law of blockade and exclusion zones has undergone change during the twentieth century. Practices heretofore considered unlawful except as a reprisal are now arguably legitimate as a claim of right depending on the circumstances of their use.

The dynamic nature of warfare requires evaluating new practices on a contextual basis. The customary law retains at least part of its vitality -- but the question of where and when it will be asserted appropriately and successfully (in terms of influencing the decision-making process) will depend on the circumstances of the particular conflict.<sup>203</sup> In the context of belligerent claims to stop the flow of goods to or from the enemy, customary law protects neutral freedom to conduct economic relations to the greatest extent possible. As for belligerent rights, modern-day warfare requires a flexible approach: "[R]easonableness under the circumstances. No a priori rules will provide the answers....

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<sup>202</sup> O'Connell, supra note 117, at 1102.

<sup>203</sup> See Norton, supra note 110, at 257-76. Mr. Norton reviews neutrality doctrines in the post-World War II years and concludes that neutrality's "shadowy" existence signifies a decline in its importance. Ideological, technological, and commercial developments have contributed to this decline. Nevertheless, there is still a need to regulate relations between belligerents and neutrals -- sometimes general principles of international law suffice, on other occasions, rules peculiar to neutrality doctrine have been invoked. The ability of these rules to protect the competing interests of neutral and belligerent often depends of the relative power and influence of the states involved and their ability to conduct their relations on the basis of effective reciprocity. Id. at 306-11.





[And in] the absence of organized community decision, the rule of proportionality must provide the guide...."204

Contemporary legal decision-making regarding warfare practices entails balancing neutral and belligerent rights and a contextual analysis. Professors McDougal and Feliciano discuss the utility of this approach:

From a realistic perspective, what may appropriately be emphasized is that all the various control measures [such as visit and search, blockade, and exclusion zones] are but differing modalities, with varying procedures and detailed effects, invented in response to differing conditions of application, for achieving the same objective of denying the enemy commerce which might benefit him. To appraise the lawfulness of newer modalities, devised to meet new conditions of warfare, in terms of the requirements projected in traditional law for an older modality is to impose an impossible rigidity upon the process of customary development....The lawfulness of modern measures is... a function of the detailed factors that compose particular contexts [and a]...determination of reasonableness in particular contexts.

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The individualizing of judgment...permits the careful consideration, weighing, and adjustment of the requirements...of the competing policies of securing the military effectiveness of efforts to maintain minimum order and of minimizing the disruption of neutral values.<sup>205</sup>

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<sup>204</sup>Williams, supra note 132, at 42. Professor Williams elaborates on the factors which should be considered in assessing the legal claims of belligerents and neutrals. In his view, these include: the relative power of the belligerent, past belligerent - neutral relations; the nature of the belligerent objectives; the geographical extent and duration of the conflict; the relative importance of the national interests at stake; and the nature of the weaponry used. Id. at 13-14.

<sup>205</sup>M. McDougal & F. Feliciano, supra note 6, at 479-80 (footnotes omitted).



Professors McDougal and Feliciano go on to suggest various criteria which they view as appropriate for such analysis.<sup>206</sup> Borrowing from their criteria, this analysis assesses the following factors with respect to the Iraqi and Iranian practices: (1) the degree of compliance with traditional legal criteria regarding the practices in issue; (2) the context of limited warfare; (3) the comprehensiveness of the conflict; (4) the imperatives of military necessity and effectiveness; (5) the claimants' objectives; (6) the degree of interference with neutral values; and (7) the reaction of the community of states.

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<sup>206</sup>Id. at 479.



## V. Analysis of the Iraqi and Iranian Practices

### A. The Iraqi Practice

Since 1984, Iraq's exclusion zone and blockade of Iran are part of a single strategy to cutoff oil leaving Iran's principal port at Kharg Island. This analysis addresses those attacks on neutral ships occurring inside the Iraqi exclusion zone.<sup>207</sup>

#### (1) The Degree of Compliance with Traditional Legal Criteria Regarding Blockade and Exclusion Zones

Iraq's strategy exemplifies the fusion of blockade and exclusion zone practices employed during the World Wars. The exclusion zone and the attacks on shipping serve to enforce the blockade.

Iraq's actions are consistent with certain customary practices surrounding exclusion zones and blockades. Both measures were publicly declared and given wide dissemination so that all neutral states were on notice of Iraq's intentions.<sup>208</sup> The exclusion zone and blockade are contiguous to Iranian coastal areas and islands -- no neutral coast or port is blockaded or adjacent to the exclusion zone. Iraq's enforcement has been impartial -- as evidenced by the universality of its declarations and the numerous flag-states' ships which have been subjected to

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<sup>207</sup>See supra pp. 19-20, 23-25 and accompanying notes. The exclusion zone functionally coincides with blockade.

<sup>208</sup>See id.; appendix II; INTERTANKO, supra note 86.





attack.<sup>209</sup>

An aspect of the blockade which falls short of traditional formulations is the apparent lack of effectiveness. The attacks have been successful in terms of hitting their intended target, however, the attacks have been pursued sporadically and have failed to cutoff oil trade with Iran.<sup>210</sup>

The requirement for effectiveness is a factual issue without precise means of measurement.<sup>211</sup> Strict and liberal interpretations have been made, the former requiring prevention of all passage, the latter requiring only that passage be rendered dangerous.<sup>212</sup>

For ships lifting oil from Kharg Island, clearly ingress and egress has been rendered dangerous as evidenced by the precautions taken by merchantmen and the increased insurance premiums.<sup>213</sup> It is not apparent, however, that the tankers are sufficiently threatened to make the blockade "effective." The blockade is ineffective under the traditional formulation, since Iran's oil trade continues and ships remain willing --

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<sup>209</sup>See supra pp. 19-20 and accompanying notes; appendix I.

<sup>210</sup>See supra pp. 19-29 and accompanying notes; see also R. Nokes, AP News Analysis, BC Cycle, Jan. 25, 1985, Washington Dateline; N.Y. Times, May 30, 1984, sec. D, at 1, col. 3; N.Y. Times, Jan. 30, 1985, sec. 4, at 5, col. 1 (assessing the overall effectiveness of Iraq's strategy -- and concluding that Iran's oil exports have been hampered and this has been costly to Iran's economy, but not fatal to its ability to carry on the war; the tanker war is more a psychological deterrent than a militarily effective strategy).

<sup>211</sup>R. Tucker, supra note 105, at 288-89.

<sup>212</sup>Oppenheim-Lauterpacht, supra note 4, at secs. 380-81.

<sup>213</sup>See INTERTANKO, supra note 86, at 10-12 (recommending certain precautions be taken by merchant vessels); appendix II (warning to mariners) Time Mag., Jun. 4, 1984, at 3 (discussing higher insurance premiums for tankers).



in relatively large numbers -- to assume the risk of trading with Iran.

The issue is at what point does Iraq meet the effectiveness requirement. And assuming it can be met, does the practice otherwise remain lawful in the context of its usage?

Applying the effectiveness requirement should include several considerations: must effectiveness be assessed solely on the proportion of ships attacked and hit to the total number attempting to breach the blockade, or should effectiveness be based -- in whole or in part -- on the overall long-term impact of the practice on the enemy's economy?<sup>214</sup> The traditional requirements for blockade were formulated by the large maritime powers whose capability to carry out sea and air warfare objectives were great. This conflict involves belligerents of lesser military capability. Does this dictate a different standard for assessing the legitimacy of their practices in terms of effectiveness? And lastly, the requirement for effectiveness invites added destruction of neutral values -- effectiveness implies successful enforcement presumably through forceful means. At what point does this render the requirement counterproductive to its intended purpose of protecting neutral values and minimizing destruction? Should neutral states be under some obligation to halt trade

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<sup>214</sup>Iran's economy is under severe strain caused by the war and the revolution of 1978-79. The tanker war has contributed to the economic deterioration in Iran. Iran's continued ability to export oil may ultimately decide the outcome of the war. See Washington Post, Jan. 9, 1986, at A25; Washington Post, Mar. 6, 1986, at A25.



once the blockading force establishes a modicum of credibility in its enforcement?

If the traditional formulation -- which applies effectiveness in a strict manner -- is mandatory in every case, then these issues may be disregarded. However, if minor powers are compelled to report to economic warfare (even if their capabilities are insufficient to make the strategy totally effective) then applying the effectiveness requirement more liberally may yield an appropriate balance between belligerent obligations to back up their restrictions on high seas freedoms and neutral obligations to respect those limitations once a minimal degree of effectiveness is established.

A second aspect of the Iraqi practice which falls short of the traditional blockade is the means of enforcement, i.e., air-to-surface missiles or bombs used against ships without further warning and without providing for crew safety. This method of enforcement -- carried out in conjunction with the exclusion zone -- is clearly unlawful under the customary rules established prior to the World Wars.<sup>215</sup> Under a traditional analysis, Iraq's practices could be dismissed as unlawful on this basis alone: effectiveness cannot be established by means violative of other recognized rules.<sup>216</sup>

However, the means of enforcement used by Iraq may be consistent with international law in light of twentieth century developments. The rationale behind Iraq's strategy resembles

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<sup>215</sup>See supra pp. 32-35 and accompanying notes.

<sup>216</sup>R. Tucker, supra note 105, at 289.





that used by Germany during the World Wars.<sup>217</sup> The Germans capitalized on their relative strength in submarines; so too the Iraqis are capitalizing on their air superiority. The German submarines could not abide by the traditional rules of visit and search; nor can the Iraqi aircraft. The Germans were targeting the economic lifelines of Great Britain; the same applies to Iraq's objective of cutting off Iran's oil exports.<sup>218</sup> Like Germany, Iraq has declared a zone putting neutrals on notice of hostile intent; the zone does not bar access to any neutral port or coast; and the zone has been enforced impartially.<sup>219</sup>

From the standpoint of military necessity, Iraq's attempt to cutoff Iran's oil exports is logical. Iran is economically dependent on oil exports and Iraq is less capable of sustaining a long-term ground war. Iraq enjoys air superiority, and Iran cannot effectively defend against air-to-surface missile or bombing attacks. From the standpoint of the principle of humanity,

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<sup>217</sup>Iraq's strategy also resembles the Allied long-distance blockade in that it embargoes trade without relying on large surface forces to operate close-in to hostile territory.

<sup>218</sup>See supra pp. 18-19 and accompanying notes; N.Y. Times, Aug. 26, 1985, sec. A, at 4, col. 1. Neutral shipping targeted by Germany was -- for the most part -- integrated into the Allied war effort, if not by political-military affiliations, at least by cooperation with the administrative controls attending the long-distance blockade. This is not the case with shipping in the Persian Gulf. However, the military necessity and logic behind the Iraqi attacks and the countervailing neutral interests which are at risk, do not change the analogy to the German experience. Neutrals lifting Iranian oil, while not integrated into the Iranian war effort, are trading voluntarily with Iran. Neutrals arguably could forego part or all of their trade with Iran and obtain their energy needs from alternate sources. See supra note 188 and accompanying text.

<sup>219</sup>See INTERTANKO, supra note 86, at 3-4, 8.





the Iraqi strategy limits the geographical scope of the war and attempts to deter neutrals from entering the exclusion zone. This reduces the amount of destruction which might occur if Iraq's intentions were unclear of if it were to engage in unrestricted warfare against merchant ships throughout the Persian Gulf.

These considerations may support the legality of Iraq's practices depending on how the experiences of the World Wars are interpreted. If the sea warfare practices of the general wars are viewed as aberrations -- justifiable only in the context of general warfare, or as reprisals, then the similarity in logic and circumstance is unpersuasive. If, however, one accepts the widespread practices of the World Wars as having developed the law of blockade and exclusion zones, then the similarity in circumstance seems sufficient to justify the Iraqi practice (assuming it otherwise meets the requirements for lawful blockades and exclusion zones).<sup>220</sup>

The latter interpretation is more realistic. The development and proliferation of modern weaponry, the limitations on naval forces maintained by minor powers, and the perceived advantages of waging comprehensive economic warfare strategies make it likely that states will no longer abide by the traditional limits on sea warfare. The military logic behind these practices makes their continued use likely. Accordingly, international law,

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<sup>220</sup>See supra pp. 26-29, 32-36 and accompanying text, see also Studies, supra note 10, at 69-74 (Professor Mallison argues that Germany's practices are justifiable as a claim of right).



to remain relevant to the decision-making process, must yield to these new realities of economic warfare at sea.

This does not mean that any practice directed against neutral vessels is legitimate. The reasonableness of the practice in light of the circumstances, and the application of traditional criteria where relevant still inhibit belligerent activity. However, it does mean that the practices of World Wars (concerning long-distance blockades and exclusion zones) should be considered legitimate as claims of right and should serve as a new historical baseline for assessing current practices.

In summary, the Iraqi practice blends elements of blockade and exclusion zones to embargo Iranian oil trade. The blockade comports with traditional requirements, save for that of effectiveness and means of enforcement.

It is unclear as to how far Iraq must go in order to satisfy the effectiveness factor. With respect to enforcement, Iraq's practice is clearly contrary to traditional international law. However, the experience of the World Wars and the military logic of Iraq's methods represent developments in the means of warfare which should be accounted for in emergent customary norms of international law. If such practices are otherwise reasonable, i.e., consistent with the underlying principles of the law of armed conflict and the traditional prescriptions which are relevant to modern warfare, then they should be lawful as a claim of right.



## (2) The Context of Limited Warfare

Since 1945, wars have been limited in numbers of participants and geographic area. The dangers of nuclear war, the strategic balance of forces, and the concept of collective self-defense are contributing factors to this limitation. Also, the legal framework of the United Nations prohibits war except when in self-defense.<sup>221</sup>

Despite the limited nature of war, there has not been a commensurate limitation on tactics and weapons. The range of tactics and weaponry has varied depending on the intensity of the initial force and the magnitude of the conflicting claims.<sup>222</sup>

Regarding neutral rights, some scholars maintain that limited warfare holds belligerents more rigidly to the traditional limits on economic warfare. Professor D. O'Connell states: "This is because the theory of self-defense which underlies the concept [of limited war] tends to insulate the high seas and neutral shipping therein from the state of hostilities...."<sup>223</sup> The international community (including the major powers) which comprise neutral claims will not -- in the case of limited war -- tolerate significant interference with commerce.<sup>224</sup> With respect to claims establishing operational areas, Professor Mallison maintains that in limited wars:

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<sup>221</sup>See 2 D. O'Connell, supra note 117, at 1094-1100 (self-defense measures must be necessary and proportionate).

<sup>222</sup>Id.

<sup>223</sup>Id. at 1155.

<sup>224</sup>Studies, supra note 10, at 94-95, 148-49.





[I]t may be predicted with some confidence that the interests of neutrals will be protected through their power and influence as opposed to that of the belligerents....If minor belligerents should make claims to establish such areas, stressing their military efficiency and necessity, the claims may well be outweighed by the claims of neutrals against their use.<sup>225</sup>

The practices of limited war will depend in part on the availability of weaponry. Professor Mallison states: "The particular objects of attack which are selected by minor powers should be influenced by their respective military capability to strike at them."<sup>226</sup>

The nature of limited warfare will depend also on the influence of neutral states which do not always serve to limit belligerent activity. On the contrary, neutral powers are often the providers of weaponry, along with economic, political, and moral support. This is evident in the Iran-Iraq War.<sup>227</sup> For example, Iraq has enhanced its military capability by obtaining aircraft and missiles from France to carry out the tanker war.<sup>228</sup>

Neutral states may also be constrained by the impact of political, diplomatic or military intervention of other neutral states. This too is evident in the Iran-Iraq War -- both the United States and Soviet Union have viewed the conflict in the context of their overall strategic interests, and each has been

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<sup>225</sup>Id. at 94-95.

<sup>226</sup>Id. at 148.

<sup>227</sup>See Committee Print - War in the Gulf, supra note 55, at 9-10; C. Helms, supra note 14, at 176-78 (discussing support for Iraq provided by various countries).

<sup>228</sup>See generally supra pp. 13-14 and accompanying notes; Evans & Campney, supra note 32, at 40 (discussing arms supplies for Iraq).



reluctant to do anything that might provoke the other.<sup>229</sup>

In summary, the relative capabilities of the belligerents and the collective interests of neutrals must be considered and may affect the lawfulness of belligerent practices insofar as such lawfulness is dependent on the widespread recognition and acceptance of a given practice. However, there is nothing intrinsic to limited warfare which precludes practically or legally the use of comprehensive economic warfare methods, such as exclusion zones, blockades, or unrestricted attacks on merchant shipping.

The Iraqi attacks have curtailed high seas freedoms and caused substantial damage to neutral interests.<sup>230</sup> However, neutral interests have not been sufficiently threatened to prompt military, political, or diplomatic intervention -- other than through U.N. resolutions calling for a peaceful settlement.<sup>231</sup> Moreover, the geographic extent of Iraq's practices are limited and interneutral trade is not directly affected by the Iraqi exclusion zone or blockade. Accordingly, Iraq's practices are not unlawful due to the limited warfare context. However, the overall context of the war is, in part, a function of its limited nature and is relevant to other aspects of the contextual

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<sup>229</sup>See Evans & Company, supra note 32, at 40; C. Helms, supra note 14, at 176-78.  
<sup>230</sup>See infra pp. 70-72 and accompanying notes.  
<sup>231</sup>See infra note 14A and pp. 73-75 and accompanying notes.



(3) The Comprehensiveness of the Iran-Iraq War

There is no objective standard for assessing the comprehensiveness of war. Instead a subjective assessment of the national commitments, war aims, weapons employed, willingness to negotiate, and so forth, is the only reasonable way to analyze whether a given method is reasonable and proportionate to the overall dimensions of the conflict.

The Iran-Iraq War is an intense war involving two participants and occurring within a limited geographical area. It appears that both parties are using any and all available means to accomplish their respective aims. The war aims of the Iraqis are limited essentially to the border dispute over the Shatt al-Arab and to preventing interference in its internal affairs by the Iranians.<sup>233</sup> The Iranian objectives are more comprehensive: they seek, inter alia, to overthrow the Baathist regime.<sup>234</sup> Iraq is willing to negotiate.<sup>235</sup> Iran is not.<sup>236</sup> Iran's ground offensives are characterized by human wave assaults.<sup>237</sup> The war is six years old and stalemated. The intensity of the conflict

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<sup>232</sup>The limited nature of the Iran-Iraq War is particularly relevant to the effect on neutral values and world community reaction to Iraq's practices. See infra pp. 70-79.

<sup>233</sup>See supra pp. 10-11 and accompanying notes.

<sup>234</sup>See supra pp. 11-12 and accompanying notes.

<sup>235</sup>See supra p. 16 and accompanying notes.

<sup>236</sup>Id.

<sup>237</sup>Daly, supra note 31, at 153-54.



is seen also in the high casualty levels.<sup>238</sup> Under the circumstances, it is not unreasonable that Iraq seeks to break the deadlock by cutting off Iran's economic lifeline.

The tanker war has not significantly changed or widened the dimensions of the war. At the outset, both parties conducted hostilities at sea, attacked economic targets, and declared exclusion zones in the Persian Gulf which do not restrict genuinely interneutral trade.<sup>239</sup>

In summary, the use of the exclusion zones and unrestricted warfare tactics against merchant vessels which violate the zone or breach the blockade is proportionate to the dimensions of the conflict and consistent with the overall intensity of the war. In this respect, the Iraqi tactics are reasonable.

#### (4) The Imperatives of Military Necessity and Effectiveness

The reasonableness of a given practice is also a function of its necessity and effectiveness which may be measured in terms of the military rationale, available alternatives, and results.

The military rationale of Iraq's attacks has already been discussed in light of the traditional prescriptions.<sup>240</sup> In short, Iraq is capitalizing on its advantage in air power and is exploiting Iran's military weaknesses and economic vulner-

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<sup>238</sup>See supra p. 17 and accompanying note.

<sup>239</sup>See supra pp. 18-19 and accompanying notes.

<sup>240</sup>See supra pp. 56-58 and accompanying notes.





ability.<sup>241</sup>

The necessity of avoiding traditional limits on attacking merchant vessels is evident. Like the unrestricted submarine warfare of the World Wars, the tactic of air-launched missile attacks precludes adherence to traditional rules.<sup>242</sup>

But military necessity is also dependent on whether there exists any less destructive alternative which will accommodate the legitimate objectives of the claimant. For Iraq, there is the obvious alternative of foregoing an embargo of Iran's trade or limiting its attacks to economic targets which do not involve third parties.

Some form of economic warfare against Iran is undoubtedly considered essential to Iraq's leadership since it is far less able to sustain a long-term ground war. And Iraq's reliance on more sophisticated weapons is insufficient for a decisive victory or for forcing negotiations.

Avoiding third party involvement was attempted during the early stages of the war. This included attacks on oil fields, pumping stations, refineries, pipelines, railroads, and power plants.<sup>243</sup> Iran was able to withstand and adapt to the damage

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<sup>241</sup>See id.; Washington Post, Jan. 9, 1986, at 1925 (Iran's economy is highly dependent on oil exports, 85% of which transit the Persian Gulf); N.Y. Times, Sep. 23, 1985, sec. A, at 4, col. 3 (discussing Iran's inability to prevent Iraqi air attacks).

<sup>242</sup>See supra pp. 37-47 and accompanying notes.

<sup>243</sup>See Stauffer, supra note 73, at 101-02.



caused by these attacks.<sup>244</sup> The circumvention measures taken by Iran to offset their initial losses led to the escalation that implicated third party interests.<sup>245</sup> Professor Stauffer describes the factors which led to expanded economic warfare objectives:

Underlying the [tanker war] was an economic and political imbalance which was slowly working in favor of Iran and which Iraq felt compelled to rectify.

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A second element was the introduction of new military technology in the form of Super Entendard aircraft and the Exocet missiles....

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Finally, Iraq needed to cripple, if possible, Iran's oil lifeline in order to offset Iran's overwhelming superiority on the ground....[I]nterdiction of Iran's oil revenues remained the major option for changing the balance in a war of attrition.<sup>246</sup>

Thus, Iraq took the war to the Gulf and commenced its attacks in earnest against neutral shipping in early 1984. From the standpoint of military necessity, this strategy cannot be dismissed as unreasonable or inappropriate.

Though conceding the need to escalate the war against Iran's oil industry, two outstanding issues remain: could Iraq accomplish its ends by escalating attacks against export facilities on land, or could Iraq accomplish its ends by peaceful capture and condemnation procedures or by destroying vessels only upon

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<sup>244</sup>Id. at 103, 105-06, 109-10. For instance, Iran shifted its export activities from the northern port of Khorramshahr to Kharg Island and to rail and road transport. Id. at 106.

<sup>245</sup>See id. at 107.

<sup>246</sup>Id. at 110-11.



providing for crew safety?

Iran's primary facility is Kharg Island. It is not clear whether concentrated and sustained attacks against this and other Iranian exporting facilities would be successful given Iraq's military capability. Iraq has carried out repeated attacks against Kharg Island with only limited success.<sup>247</sup> It is not clear why this strategy has not been pursued more aggressively, but one possibility is Iraq's belief that Kharg Island is not destructable given Iraq's military resources and capabilities.<sup>248</sup> Another possibility is Iran's apparent willingness and ability to alter its export activities to other facilities.<sup>249</sup>

Peaceful capture or provision for crew safety are apparently not within Iraq's military capability. This is a function of Iraq's naval resources and logistic capabilities. Without a large surface force, it would be difficult and dangerous to attempt capture or provision for crew safety.<sup>250</sup> Additionally, Iraq's access to the Gulf by sea has been effectively cutoff thus eliminating its naval bases for operation.

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<sup>247</sup>See Washington Post, Sep. 27, 1985, at A32; Washington Post, Mar. 3, 1986, at A13.

<sup>248</sup>See Cordesman, The Gulf Crisis and Strategic Interests: A Military Analysis in American-Arab Affairs, Summer 1984, at 8, 13 (some U.S. specialists consider the Kharg Island facilities extremely difficult to destroy with tactical aircraft); Washington Post, Mar. 3, 1986, at A13 (stating that Kharg Island facilities are difficult to hit and easy to repair).

<sup>249</sup>See N.Y. Times, Dec. 30, 1985, sec. D, at 10, col. 2.

<sup>250</sup>As of 1984, Iraq reportedly had only about 35 naval combatants. Committee Print - War in the Gulf, supra note 55, at 12.





In terms of effectiveness, Iraqi attacks have had an affect. They have been executed successfully and have prevented or deterred a degree of Iran's oil trade.<sup>1A</sup>

In summary, Iraq's strategy is a logical adaptation of its military strengths being employed against Iran's economic and military vulnerability. It is a logical progression from previous efforts to cripple Iran's economy. Although not decisive, the attacks have had some affect.

Less destructive alternatives may be available in the form of economic targets which do not involve third parties or through peaceful capture or destruction only after providing for crew safety. Although it is difficult to assess objectively the feasibility of these alternatives, past experience and Iraq's military capabilities cast doubt on the viability of either course. If, however, they are reasonably available, Iraq has an obligation to pursue them in lieu of its present strategy.

#### (5) The Iraqi Objectives

Iraq's military objectives have been discussed.<sup>2A</sup> Arguably, these objectives are consistent with the principles of military necessity and humanity.<sup>3A</sup>

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<sup>1A</sup>See Daly, supra note 31, at 158; N.Y. Times, May 24, 1984, sec. A, at 10, col. 1; Washington Post, Jan. 9, 1986, at A25; Washington Post, Mar. 6, 1986, at A25 (describing the overall effectiveness of the Iraq attacks).

<sup>2A</sup>See supra pp. 10-11 and accompanying notes.

<sup>3A</sup>See supra pp. 2-4 and accompanying text.



Aside from the military basis for Iraq's attacks on shipping, some observers suggest that Iraq seeks to "internationalize" the conflict.<sup>4A</sup> That is, if neutral interests are threatened, they will lend added support to Iraq's cause since they oppose the spread of Iran's revolution.<sup>5A</sup> Internationalizing the conflict could occur directly by attacking neutral ships thus prompting intervention, or indirectly by provoking Iran into carrying out its threat to close the Strait of Hormuz which could also prompt intervention.<sup>6A</sup>

If this motive is in fact behind the Iraqi strategy, then the object of Iraq's attacks is more than Iran's economy, it is the neutral states themselves. Iraq has no lawful claim to coerce neutral states into intervention.<sup>7A</sup> This would undercut the lawfulness which might otherwise be ascribed to Iraq's actions.

However, there is reason to doubt that this political objective is Iraq's primary motivation. Iraq has been attacking neutral vessels in earnest since 1984. The GCC states, Europeans, and superpowers have not intervened or shown a willingness to increase support for the Iraqis as a direct result of the tanker war. Iran, on the other hand, is reluctant to carry out its threat to close the Strait of Hormuz (assuming it has the power to

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<sup>4A</sup>See Daly, supra note 31, at 156; Committee Print - War in the Gulf, supra note 55, at 13; N.Y. Times, Jan. 20, 1985, sec. 4, at 5, col. 1.

<sup>5A</sup>See Daly, supra note 31, at 156.

<sup>6A</sup>See N.Y. Times, Jan. 20, 1985, sec. 4, at 5, col. 1.

<sup>7A</sup>U.N. Charter arts. 1, 2(3)-(4).



do so) since such a move would cutoff its own exports. Thus, it is unlikely that "internationalizing" the conflict is more than an incidental or secondary aspect of Iraq's strategy.

Military strategies often involve political or diplomatic benefits which are secondary to military necessity and logic. While such objectives may not be lawful objects of coercion per se and they should not be dispositive of its legality without consideration of the military rationale as an adequate basis for justification. Accordingly, unless internationalizing the conflict is the underlying rationale for the Iraqi practice, it does not undercut the lawfulness of the practice.

(6) The Degree of Interference with Neutral Values

Iraq's war against neutral shipping has been costly for neutrals. Lives and property have been lost. However, ships entering the exclusion zone are aware of Iraq's intentions and are engaging in trade with assists Iran, and the exclusion zone does not interfere with interneutral trade.

Aside from the human and material values directly threatened by the attacks, other values are also at stake: free navigation on the high seas and the economic value of oil transiting the Persian Gulf. At the beginning of the war, Iran and Iraq oil represented 15% of OPEC production.<sup>8A</sup> In 1984, Western European countries and Japan were importing significant amounts of oil

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<sup>8A</sup>Evans & Company, supra note 32, at 50.



from the Persian Gulf.<sup>9A</sup> There was much concern in the West over possible disruption of world oil markets as a result of Iraq's practices.<sup>10A</sup> However, after six years, the aggregate affect on oil imports and prices has not been great. This has been, in part, due to world energy supplies and alternate sources of energy, but it is also due to the relative effects of the tanker war:<sup>11A</sup>

[T]he tanker war is having remarkably little effect on the Persian Gulf exports through the Strait of Hormuz...The states in the region have accommodated the inconvenience caused by the war. In general, the tankers do not sink when hit, but make it to port for repairs. The crude on board is usually saved....Higher insurance premiums have been compensated for....<sup>12A</sup>

In addition, there is concern for free navigation. This underlies neutral claims that their rights are being compromised by belligerent practices. However, as long as interneutral trade and the Strait of Hormuz remain open, states appear willing to tolerate the degree of infringement on high seas freedoms incurred thus far.

The real danger to neutral interests lies in escalation. A complete cutoff of oil from the Persian Gulf would pose a serious threat to neutral interests.<sup>13A</sup> This could occur if either party conducts widespread attacks on shipping outside the exclusion zone or if the war were to spread to other moderate

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<sup>9A</sup>Committee Print - War in the Gulf, supra note 55, at 34-35.

<sup>10A</sup>Evans & Company, supra note 32, at 40.

<sup>11A</sup>Committee Print - War in the Gulf, supra note 55, at 5; Washington Post, Mar. 6, 1986, at A25.

<sup>12A</sup>Committee Print - War in the Gulf, supra note 55, at 35.

<sup>13A</sup>See id. at 13-17, 35-38.





Gulf states.<sup>14A</sup> Along these lines, the United States has repeatedly threatened to intervene if the Strait of Hormuz is closed.<sup>15A</sup>

In summary, neutrals have interests at stake in the Persian Gulf and these interests are threatened by the war. However, the current level of hostilities at sea does not rise to the level in which the neutral interests are vitally threatened or to a point where interference with neutral states clearly outweigh the interests of the belligerents.

(7) The Reaction of the Community of States

The consent of nations is central to the development of customary international law. International reaction to the Iraqi attacks on shipping is therefore a critical factor in assessing its lawfulness. It is also a difficult factor to assess: Nations rarely react with unanimity; their positions

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<sup>14A</sup>The concern over escalation is reflected in the actions taken in the UN Security Council. See S.C. Res. 540, 38 U.N. SCOR (2493<sup>d</sup> mtg.) at 6, U.N. Doc. S/INF/39 (1983) [hereinafter cited as Res. 540]; S.C. Res. 552, 39 U.N. SCOR (2546<sup>th</sup> mtg.) at 15, U.N. Doc. S/INF/40 (1984) [hereinafter cited as Res. 552]. These resolutions call for peaceful settlement of the Iran-Iraq dispute and respect for free navigation in the Persian Gulf by all states. Resolution 552 was passed in reaction to Iranian attacks outside the exclusion zones -- this development was condemned by the Security Council, in part, because it threatened to escalate the war. Iraqi attacks on shipping within the exclusion zone or pursuant to its blockade have not been specifically condemned in the U.N.

<sup>15A</sup>Committee Print - War in the Gulf, supra note 55, at 8-9. U.S. resolve to intervene has fallen-off somewhat in light of its reduced reliance on Persian Gulf oil, preoccupation with other trouble-spots, and the perception that the GCC states can prevent closure of the Strait of Hormuz. See N.Y. Times, May 24, 1984, sec. A, at 10, col. 1; Washington Post, Feb. 13, 1986, at A1.



are often ambiguous, inconsistent, and motivated, in part, by non-legal considerations. These difficulties are evident in the reaction to Iraq's practices in the Persian Gulf.

Iraq has specifically invoked international law in defense of its attacks on shipping. Iraq's Foreign Minister, Tariq Aziz, has stated that the purpose behind its exclusion zone and blockade "is to make the Iranians incapable of continuing the war....We just want to cut off all cooperation that provides them with cash."<sup>16A</sup> In the Iraqi view, ships entering Iranian ports are functionally non-neutral since they are feeding the Iranian economy. In a letter to the UN Security Council, Iraq's representative stated that his country was acting in self-defense in attacking Iranian oil exports:

In view of the persistence of the Iranian Government in continuing its aggression and in refusing to [settle the dispute] with Iraq by peaceful means, Iraq has no alternative but to pursue its policy of defending itself on the basis of those provisions of international law which authorize a State which is a party to an armed conflict to impose a blockade on the ports of the adversary State, within a precisely defined zone made known to all, in order to induce that State to accept peace....Accordingly, ships [entering the exclusion zone and violating the blockade] forfeit their neutral character since they violate a right unequivocally conferred by international law....<sup>17A</sup>

In 1983, the Security Council passed Resolution 540 which called for a peaceful settlement of the dispute and affirmed "the right of free navigation and commerce in international waters," and called upon all States to respect this right by

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<sup>16A</sup>N.Y. Times, Jan. 20, 1985, sec. 4, at 5, col. 1.

<sup>17A</sup>U.N. Doc. S/16972, Feb. 20, 1985, letter from the Permanent Representative of Iraq to the Secretary-General.



ceasing "immediately all hostilities in the region of the Gulf, including all sea lanes, navigable waterways, harbour works, terminals....and all ports...."18A This resolution did not distinguish between Iraqi and Iranian attacks on neutral ships.

Iraq has accepted the principles embodied in Resolution 540 and will abide by them when Iran agrees to negotiate and allows free access to Iraq's ports.19A

The regional states in the Persian Gulf have been generally supportive of Iraq.20A They have also distinguished between Iraqi attacks occurring inside the exclusion zone and those occurring outside the zone -- perpetrated principally by Iran.21A This was reflected in the Security Council debate during 1984 on the tanker war after Iran allegedly attacked ships outside the exclusion zones in international waters and in territorial waters of GCC states (Kuwait and Saudi Arabia).22A This was viewed as a dangerous escalation which prompted the GCC states to initiate Security Council action resulting in Resolution 552.23A This resolution states, in part: "[A]ttacks should

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18A Res. 540, supra note 14A, at para. 3.

19A U.N. Doc. A/38/560 S/161/20 (Annex), Nov. 3, 1983, letter from the Permanent Representative of Iraq to the Secretary-General.

20A See Committee Print - War in the Gulf, supra note 55, at 28-33. Regional states in this context means the members of the Gulf Cooperation Council (GCC) which include Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, and the United Arab Emirates (UAE).

21A See U.N. Doc. S/16574, May 21, 1984, letter from the GCC states to the Security Council complaining of Iran's attacks on Kuwaiti and Saudi Arabian merchant ships; see also 21 U.N. Chronicle No. 5 5-8 (1984) (summarizing the positions taken by the various GCC states in the UN debate over Res. 552).

22A See supra note 21A.

23A Res. 552, supra note 14A.





cease forthwith and that there should be no interference with ships enroute to and from States that are not parties to the hostilities...."24A It also specifically condemns the attacks on Kuwaiti and Saudi Arabian vessels.25A

During the debate over Resolution 552, some states saw a difference between the Iraqi and Iranian attacks. For example, the representative from Oman stated:

The Iran-Iraq War has taken a new and dangerous turn.... [The Iranian attacks on Kuwaiti and Saudi tankers] were a materialization of Iran's threats to expand the scope of the war....[Oman] considers [such acts] dangerous precedent, contrary to the laws of navigation and a flagrant violation of the principles of international law and the United Nations Charter.

Iraq, being in a declared state of war with Iran, blockaded Iranian ports and attacked vessels and tankers sailing to and from Iranian ports. However, this in no way justifies Iran's attacks on tankers and vessels proceeding to and from the ports of the Arab States members [sic] of the [GCC], which do not wish to be dragged into the conflict.26A

Likewise, the representative of the League of Arab States took a similar position:

It cannot be denied that [the Kuwaiti and Saudi Arabian ships] were in no way military; they were not participating in the war; they were outside the combat zone....

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Iraq, a founding member of the League, has declared its compliance with...resolution 540 (1983)....[Whereas] the Iranian Government has rejected [resolution 540]....

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24A Res. 552, supra note 14A, at para. 5.

25A Id. at para. 4.

26A U.N. Doc. S/PV.2543, May 29, 1984, at 31.



[T]he recent escalation tends to add a new dimension to the conflict through the blockading of the ports of States that are not parties to the conflict.<sup>27A</sup>

Among the Security Council members, the Netherlands somewhat ambivalently echoed a similar point of view, but went on to endorse the call for respect of free navigation in the Gulf by all states. The U.N. Chronicle paraphrased the Netherland's representative:

As to the legal aspects, under international law, belligerents 'may take measures' to restrict shipping to and from ports of the other belligerents. Such measures did, of necessity, affect the right of third States under whose flag such shipping was conducted. But indiscriminate attacks against merchant shipping 'in whatever part of the Gulf' fell outside the scope of permissible use of armed force.

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Freedom of navigation was a right that should be respected equally by all concerned parties in the Gulf.<sup>28A</sup>

The French representative took a position, which suggests a degree of recognition for the distinction between attacks occurring outside the exclusion zone and those occurring inside. Paraphrasing the French representative, the U.N. Chronicle reported:

[T]he attacks in question [against Kuwaiti and Saudi Arabian ships] had taken place against nonbelligerent States in an area outside of the zone of conflict and, in some cases, under the direct sovereignty of some of them. GCC States had established a clear distinction between attacks against two of them in their own sovereign domain and acts of war resulting from the tragic Iran-Iraq conflict. At issue were two different matters: on the one hand, the conflict and, on the other hand, 'the totally unwarranted violations

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<sup>27A</sup>U.N. Doc. S/PV.2541, May 25, 1984, at 36, 38, 39-40.

<sup>28A</sup><sup>21</sup> U.N. Chronicle, No. 5, supra note 28A, at 8-9.



of the most legitimate rights and interests of third parties'.<sup>29A</sup>

The media noted the apparent distinction between Iraqi and Iranian practices. The New York Times reported that "delegates from several countries, including the United States, contended that Iran's attacks...were different from Iraqi attacks near Iran's oil port....The Iraqi attacks were treated in the Council as being within the limits of acceptable behavior...while Iran's bombardments were not."<sup>30A</sup>

Other states did not agree with the distinction and maintained that all attacks on shipping are illegal. For instance, the representative from Panama stated:

My country makes an urgent appeal to the parties to the conflict to refrain from further hostile acts against Panamanian vessels and to respect and implement scrupulously the principles of international law enshrining the principles of freedom of navigation....

We appeal to both sides to abide by the fundamental norms of humanitarian international law, which oblige respect for...the lives and physical well-being of those not participating in hostilities -- and this would certainly apply to Panamanian vessels....Consequently, we demand that all parties show respect for our vessels.<sup>31A</sup>

Representatives from India, Pakistan, Great Britain, and Malta expressed concern over the Iranian attacks, but also maintained that respect for free navigation of both parties was required -- implying that they did not countenance Iraqi

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<sup>29A</sup>Id. at 9.

<sup>30A</sup>N.Y. Times, Jun. 2, 1984, sec. 1, at 1, col. 5.

<sup>31A</sup>U.N. Doc. S/PV.2542, May 25, 1984, at 26.



attacks on neutral shipping.<sup>32A</sup>

In the debates surrounding the 1984 Security Council action, the United States supported the GCC draft resolution (552), but declined to state unequivocally that it accepted Iraqi conduct in the Persian Gulf. The U.S. representative's remarks included the following:

The war not only continues but expands posing an increasing threat to the stability of the region.... The acceleration of attacks against shipping in the Gulf, particularly attacks against shipping going into or out of the ports of non-belligerent States, not only threatens those States, but indirectly poses a potential threat to [the world's economic recovery]....<sup>33A</sup>

Outside the structure of the United Nations, the world has responded with a general sense of complacency. States have allowed their ships to enter the Gulf; they have not intervened or organized a collective military response; nor have they initiated significant legal, political, or diplomatic efforts to stop the Iraqi attacks. The main concern is over the danger of escalation.

Perhaps the reasons for the lack of a strong response (outside the United Nations) is the relative importance of the conflict. Outside the Persian Gulf area, no states's vital interests are directly and imminently threatened.

The GCC states have been supportive of Iraq, but not to the point of involving themselves in the hostilities. The super-

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<sup>32A</sup>See Press release summaries of statements, U.N. Doc. SC/4643, Jun. 1, 1984, at Takes 6, 9, 10; 21 U.N. Chronicle, No. 5, supra note 28A, at 10.

<sup>33A</sup>21 U.N. Chronicle, No. 5, supra note 28A, at 8.





powers have also reacted with a degree of support for Iraq, but are apparently satisfied to see each side exhaust the resources of the other -- so long as the conflict remains confined to its current dimensions.<sup>34A</sup>

In addition, the overall strategic importance of the Gulf has -- for the time being -- receded in priority; this is partly due to the reduced reliance by the West on oil exports coming out of the Gulf area.<sup>35A</sup>

The reaction of the world community produces no clear consensus on whether Iraq's actions are lawful under international law. Arguments have been made both ways based on the positions taken by various states in the U.N. Security Council. Additionally, there has been no clear response outside the U.N. to the Iraqi practice in terms of its legitimacy under international law.

#### B. Conclusions

Iraq is on the defensive, the morale of its troops shaky, and its economy strained. However, Iraq does have an advantage in sophisticated military equipment.

Economic targeting has been used strategically by each side since the early stages of the conflict. Iraq, in an effort to break the deadlock, declared the exclusion zone and blockade

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<sup>34A</sup>See Evans & Company, supra note 32, at 40; see also International Institute for Strategic Studies (IISS) (London) Strategic Survey 1984-1985 67, 70-71 (1985) (assessing the impact of the war on the superpowers).

<sup>35A</sup>See Washington Post, Feb. 13, 1986, at A1.



of Kharg Island. Functionally, these two devices serve a common purpose -- interdiction of Iran's oil exports.

In principle Iraq's attacks against neutral shipping -- carried out in conjunction with a declared blockade and exclusion zone -- is legally supportable under international law. In practice, however, the Iraqi strategy thus far has failed to meet the customary requirement of effectiveness. This conclusion is based on a subjective assessment of the effectiveness criteria and stems from the fact that Iraq has not, on a sustained basis severely curtailed Iran's oil exports. Iran has been able to continue much of its export activity; ships continue to enter the zone in substantial numbers and Iran's economic lifeline remains largely in tact. Under these circumstances, it is reasonable to conclude that Iraq's blockade has not been effectively enforced.

Iraq's practices are also objectionable if less destructive alternatives are reasonably available. For instance, if Iraq can sustain attacks against Iraqi targets of economic significance, or if peaceful stoppage and capture of ships lifting Iran's oil is practicable, then such methods involving less interference with or destruction of neutral values would be required in lieu of attacking neutral ships.

The legality of Iraq's practices, assuming that less coercive alternatives are not feasible and that Iraq has the capability to effectively pursue its present strategy, requires an assessment of the contextual criteria discussed above.



The World Wars established the strategic value of comprehensive economic warfare measures enforced by long-distance blockades, sizeable war zones, and unrestricted warfare against neutral shipping within such zones. These methods comport with the basic principle of military necessity since they further the logical objectives of stopping economic intercourse with the enemy and utilize the most efficient military means for carrying out such objectives; the principle of humanity is met since neutrals are duly warned and deterred, contact between opposing forces is minimized, and the area of hostilities defined and thereby limited.

Economic warfare measures of the World Wars were not aberrations based on reprisal and counter-reprisal; they signified emergent customary practices based on the technological realities of modern warfare and the expanded nature of economic warfare objectives.

The Iraqi method of enforcing its blockade is analogous to the strategies used during the World Wars and bears particular similarity to Germany's submarine warfare against neutral shipping going to and from Great Britain. The principles of military necessity and humanity may be met by Iraq in the same manner they were in the World War analogues.

The Iraqis have complied with the basic traditional requirements in establishing an exclusion zone and blockade by openly declaring such measures and impartially enforcing them. The means of enforcement is reasonable given Iraq's insufficient





surface naval forces and its inability to comply with the traditional requirements for visit, search and capture of vessels entering the zone or violating the blockade.

The limited warfare context of Iraq's practices means that neutral values may take on a greater significance than in a general war setting. However, the limited warfare criterion does not necessarily preclude tactics such as those employed by Iraq. Iraq's strategy is being employed in a limited area which does not interfere in genuinely interneutral trade. Iraq's practices reflect their limited military capability and are directed against lawful military objectives. Neutral interests are not so threatened as to clearly outweigh the rights of the Iraqis to attempt a cutoff of Iran's oil trade.

In terms of comprehensiveness, the Iran-Iraq War is an intense war involving two participants, fought in a limited geographic area. Each belligerent has committed a significant portion of its national resources to the conflict. The threat to Iraq goes to its very existence; Iran seeks to overthrow the Baathist Government and install one based on its revolutionary principles. The Iraqi practices are proportionate to the overall dimensions and intensity of the war.

The imperatives of military necessity and effectiveness support the legitimacy of Iraq's war against neutral shipping in the Gulf. The early economic warfare initiatives carried out against Iran were insufficient. Destroying Kharg Island



is a possible option, but Iraq's ability to accomplish this is questionable. Its efforts thus far to shutdown the facility have been unsuccessful.

In resorting to attacks on neutral vessels, Iraq may be required legally to first pursue less destructive options: peaceful capture or providing for crew safety; but here too, Iraq's capabilities to pursue such options is questionable.

In terms of effectiveness, Iraq has been successful in carrying out attacks. The failure lies in the overall affect of the attacks given their consistency, intensity, and the concomitant affect on the willingness of neutral vessels to breach the blockade and exclusion zone.

The Iraqi attacks have interfered with neutral values: property and lives have been lost. However, the world energy market has not been significantly disrupted and no neutral state has been provoked into direct intervention. In short, neutral states have tolerated the Iraqi attacks despite their rhetorical objections. The threat lies not in the level of destruction of neutral values encountered to date, rather in the potential for escalation.

Iraq's objectives may include political considerations of internationalizing the conflict. However, this seems to be, at best, a secondary consideration which should not undercut the legality of their practices.

The reaction of the international community has been ambiva-



lent -- no definitive conclusion can be drawn from the reaction of states to the Iraqi attacks. Arguments have been made in the United Nations opposing and implicitly supporting the Iraqi attacks within the exclusion zone. Resolution 540 calls for respect for free navigation by all parties and thus signifies a refusal to expressly recognize the legitimacy of the Iraqi attacks. Juxtaposed to this is the relatively greater concern shown for Iranian attacks outside the exclusion zones.

These considerations taken as a whole lead to the conclusion that Iraq's strategy is supportable in principle under international law when considered in its contemporary context. However, the implementation of Iraq's strategy fails to meet the traditional requirement of effectiveness. Moreover, if less coercive alternatives are reasonably available to Iraq, they must be pursued in lieu of Iraq's present course which is relatively destructive of neutral values. The viability of such alternatives is a function of Iraq's military capability which is limited in terms of naval power.

### C. The Iranian Practices

The Iranian attacks are analyzed as reprisals for Iraq's warfare against neutral shipping and as retaliatory measures directed against the various GCC states who support Iraq's war effort. The visit and search operations are analyzed as a claim of right. Both tactics are discussed under the traditional and contextual criteria applied to the Iraqi practices.



(1) The Degree of Compliance with Traditional Legal Criteria

Iran has indicated that its attacks on neutral shipping are -- at least in part -- in reprisal for attacks in kind by Iraq.<sup>36A</sup> Reprisal action refers to "acts directed against the enemy which are conceded to be generally unlawful, but which constitute an authorized reaction to prior unlawful acts of the enemy for the purpose of deterring repetition of such antecedent acts."<sup>37A</sup> Justifying Iran's attacks on the basis of reprisal assumes the underlying illegality of Iraq's attacks and accrual of a right of reprisal to Iran.<sup>38A</sup> The legitimacy of reprisal action depends on the claimant's adherence to the traditional limitations of proportionality, target, and manner of the reprisal.<sup>39A</sup>

Proportionality refers to a standard of reasonableness under the circumstances -- that is, action designed to reasonably affect the enemy's expectations on the costs and benefits associated

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<sup>36A</sup>See McLean's Mag., May 28, 1984, at 30. Iran's motive is not limited to reprisal against Iraq -- Iran's leadership has also indicated a general objective of denying others use of Persian Gulf sea-lanes. See N.Y. Times, Jun. 12, 1984, sec. A, at 12, col. 3.

<sup>37A</sup>M. McDougal & F. Feliciano, supra note 6, at 679.

<sup>38A</sup>Customarily, the right of reprisal accrues to the injured state. See 2 Oppenheim-Lauterpacht, supra note 4, at sec. 33. It is not clear whether Iraqi's attacks on neutrals, if illegal, creates a right of reprisal for Iran. See R. Tucker, supra note 105, at 257 n.28. For purposes of this analysis it is assumed that Iran has a right to conduct trade with neutrals, thus imparting a right of reprisal. Moreover, Iran has an independent basis for reprisal to the extent that its ships have been attacked. See, e.g., Time, May 28, 1984, at 51.

<sup>39A</sup>See M. McDougal & F. Feliciano, supra note 6, at 682.





with its continued resort to the initial illegal conduct.<sup>40A</sup> Iran's attacks on neutral ships arguably meets this requirement: Iran's stated purpose is to stop the Iraqi attacks against shipping. Iran's tactics are similar to those employed by Iraq and have not exceeded the Iraqi practice in either number or intensity.<sup>41A</sup>

Traditionally, targets of reprisal are persons and property of the enemy bearing some reasonable relation to the acts sought to be deterred.<sup>42A</sup> Iran's practice fails this requirement since its object is interneutral commerce.<sup>43A</sup> Interfering with neutral trade may be part of reprisal action, but traditionally entails targeting neutral trade with the offending belligerent.<sup>44A</sup>

With respect to the manner of Iran's reprisal i.e., attacks on unarmed neutral merchant vessels without warning or provision for crew safety, this too fails to meet traditional limitations on sea warfare.<sup>45A</sup> While reprisals are, by definition, resort to normally unlawful measures, this does not alleviate the need

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<sup>40A</sup>Id.

<sup>41A</sup>See appendix II.

<sup>42A</sup>See R. Tucker, supra note 105, at 152; 2 Oppenheim-Lauterpacht, supra note 4, at sec. 37; M. McDougal & F. Feliciano, supra note 6, at 684.

<sup>43A</sup>See McLean's Mag., May 28, 1984, at 30. Creating political pressure on Iraq to cease its attacks by threatening the interests of other Gulf states is inconsistent with the customary limits on lawful reprisal objectives.

<sup>44A</sup>2 Oppenheim-Lauterpacht, supra note 4, at sec. 319. For example, Germany's submarine warfare and the Allied long-distance blockades affected, in the first instance, neutral rights, but were ultimately directed against the enemy since it was commerce with the enemy that was the target of reprisal. Id.

<sup>45A</sup>Destruction of neutral merchant vessels is traditionally limited to cases of persistent refusal to stop or active resistance to visit and search -- and only then upon placing the crew and papers in a place of safety. Id. at sec. 194a; R. Tucker, supra note 105, at 350.



for reasonableness. In this case, resorting to indiscriminate attacks on unarmed merchant ships without warning, an exclusion zone, or provision for crew safety, is unreasonable and the customary prescriptions concerning the protection of neutral merchant ships should apply.<sup>46A</sup>

Iran could also argue that its attacks on shipping constitute a lawful reprisal or retaliation against the various GCC states for their active support of Iraq.<sup>47A</sup> Retaliatory measures directed against the activities of neutrals which have violated their duties as neutrals is recognized under international law.<sup>48A</sup> This belligerent right is subject to international law principles concerning reprisal in time of peace which allows for retaliatory action so long as it is roughly proportionate to the neutral's offense.<sup>49A</sup> The level of force employed is subject to the general standards of reasonableness, military necessity, and minimum destruction of human and material values.

In this case, it would be reasonable and perhaps necessary for Iran to take retaliatory action against persons or property engaged in or related to assistance being rendered to Iraq.

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<sup>46A</sup>The arguments, discussed in section IV.B.3., above, concerning emergent norms of sea warfare regarding threatment of neutral vessels and economic warfare are inapplicable in this instance since Iran's attacks are directed at international trade and are not part of an economic warfare strategy.

<sup>47A</sup>See generally IISS (London), supra note 34A, at 67-68 (1985); Committee Print - War in the Gulf, supra note 55, at 28-33 (discussing GCC-State support for Iraq).

<sup>48A</sup>See R. Tucker, supra note 105, at 261-62; 2 Oppenheim-Lauterpacht, supra note 4, at sec. 359.

<sup>49A</sup>See R. Tucker, supra note 105, at 261-62.



However, indiscriminate attacks on merchant vessels outside any exclusion zone or blockade effort goes beyond such standards. Moreover, Iran has an alternative in its visit and search capability which is both less coercive and more closely tailored to the conduct it seeks to prevent.<sup>50A</sup> This is a recognized prerogative under customary international law.<sup>51A</sup> Visiting and searching ships suspected of assisting Iraq is proportionate to the threat, arguably necessary from a military standpoint, and in accord with notions of humanity.

In summary, Iran may have a right of reprisal against Iraq for the latter's attacks on neutral ships. Resorting to a reprisal requires adherence to standards of proportionality, appropriate targets, and manner of attack. Iran's attacks may be proportionate, but are directed against unlawful targets and are carried out in an unreasonable manner.

Iran's attacks on shipping cannot be justified as a reprisal or retaliatory action against the GCC states because the targets of attacks include interneutral shipping. Moreover, visit and search operations are a viable alternative for action against shipping which assists Iraq.

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<sup>50A</sup>See supra pp. 20-23 (concerning Iran's ability to pursue this option). The availability of alternatives -- short of reprisal -- for securing redress for misconduct is a procedural requirement preceding reprisals. M. McDougal & F. Feliciano, supra note 6, at 688-89.

<sup>51A</sup>See supra pp. 29-32 and accompanying notes.





## (2) The Context of Limited Warfare

As with the Iraqi practices, there is nothing intrinsic to limited warfare which undercuts the reasonableness and lawfulness of a given method. However, balancing neutral rights is an important aspect of assessing lawfulness and this is affected by the limited scope of the conflict.

The Iranian attacks -- although similar to those carried out by Iraq -- entails greater involvement of neutral interests. First, the geographic scope of the attacks is larger and affects interneutral shipping lanes throughout the Persian Gulf; secondly, the scope of the economic activity under attack is largely affecting oil trade throughout the Gulf area. The Iranian attacks are not part of a defined strategy of economic warfare against Iraq or any other state -- there is no comprehensive embargo, blockade, or exclusion zone.

These considerations which distinguish the Iranian from the Iraqi attacks, are evident in the international reaction to the former's practices.<sup>52A</sup> Generally, the international community has been less tolerant of the Iranian attacks.<sup>53A</sup> The GCC states in particular have reacted sharply to Iran's attacks; they have sponsored UN Security Council action condemning Iran and have resorted to force in repelling Iran's air forces

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<sup>52A</sup>See supra pp. 74-79 and accompanying notes.

<sup>53A</sup>Id.



from their territorial waters.<sup>54A</sup> The United States and a few other Western nations have also expressed heightened concern for the Iranian practice, viewing it as escalatory and a threat to Middle East oil supplies.<sup>55A</sup>

The relative importance of neutral interests suggests that the limited warfare context reinforces the traditional prescriptions on sea warfare that prohibits Iran's attacks.

The traditional recognition afforded visit and search operations is not affected by the limited warfare context. Neutral interests are interfered with, but not threatened with destruction. The military necessity which arguably underlies this activity outweighs neutral inconvenience, and international reaction to this activity reinforces this conclusion. There has been no general condemnation of Iran for this practice. Assuming it is reasonably employed within the traditional limitations, use of visit and search in a limited war context is a lawful belligerent prerogative.

### (3) The Comprehensiveness of the Iran-Iraq War

Iranian attacks on shipping are proportionate to the overall dimensions of the conflict. However, the attacks involve inter-neutral commerce and are occurring throughout the Gulf. The

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<sup>54A</sup>See supra pp. 74-75; N.Y. Times, Jun. 12, 1984, sec. A, at 12, col. 3 (citing Saudi Arabia's shooting down of an Iranian F-4 Phantom); IISS (London), supra note 34A, at 67-69 (discussing the defensive posture of the GCC states to Iranian provocations).

<sup>55A</sup>See supra pp. 76-78 and accompanying notes; see generally Committee Print - War in the Gulf, supra note 55, at chs. 2, 5 (assessing U.S. policy towards and energy supplies in the Persian Gulf).



Iranian practice is escalatory in terms of geographic scope and the level of destruction of neutral values.

Iran's visit and search operations are also proportionate and are occurring within the same geographic area as the attacks. This practice does not involve indiscriminate destruction of neutral ships and is more directly related to activities which constitute a military threat to Iran.

(4) The Imperatives of Military Necessity and Effectiveness

Iran's attacks on shipping are not militarily necessary or effective. Although the ships under attack could conceivably be carrying contraband or oil exports for Iraq, there has been no apparent effort to limit the attacks to these activities. Iran's attacks are not calculated to capitalize on a military strength to the direct disadvantage of the enemy. In short, Iran's practices are not part of an economic warfare strategy and do not diminish the enemy's military capability.

The lack of any military necessity for the attacks is also demonstrated by the availability of visit and search operations which offer both an effective and arguably necessary means of preventing shipping activity that does assist the enemy.

(5) The Iranian Objectives

Iran's objective of pursuing a reprisal action for alleged illegalities by Iraq is supportable (assuming the initial illegality of Iraq's attacks), but as indicated above, the targets of their



attacks are not the enemy -- they are ships engaged in international trade. As such they are not proper objects of reprisal. Carrying out the attacks for the political purpose of affecting the policies of the GCC and other Arab states is not a legitimate object of reprisal.

Similarly, while some retaliatory action may be warranted to prevent outside assistance from reaching Iraq, indiscriminate attacks on interneutral trade for the purpose of putting political pressure on the GCC states is not lawful.

(6) The Degree of Interference with Neutral Values

As in the cases of the Iraqi attacks, nationals of neutral states have been killed and property belonging to neutral states has been lost as a result of the Iranian attacks. The difference between the two practices lies in the geographic scope and extent of neutral involvement. Iran's attacks extend beyond the exclusion zones declared by the belligerents, are not part of an embargo strategy, and have included the territorial waters of neutral states. The degree of interference with neutral values by Iran is reflected in the reaction of those states affected.<sup>56A</sup>

(7) The Reaction of the Community of States

The international reaction to Iran's practices culminated in U.N. Security Council Resolution 552.<sup>57A</sup> Iran's attacks

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<sup>56A</sup>See supra pp. 72-79 and accompanying notes.

<sup>57A</sup>See supra n.14a and pp. 74-75 and accompanying notes.





are not perceived as part of an economic warfare strategy directed against Iraq. Instead, Iran's actions are seen by most as provocations directed against neutral states.<sup>58A</sup>

Outside the United Nations, the defensive measures taken by the GCC states further illustrates rejection of Iran's practices.<sup>59A</sup> Saudi Arabia, in particular, has demonstrated its resolve to forceably counter Iranian attacks directed against its ships or in its territorial waters.<sup>60A</sup> The United States also has expressed a willingness to back Saudi (and other GCC states) defense through military aid and, if necessary, military intervention.<sup>61A</sup>

With respect to Iran's visit and search practices there has been general acquiescence. Most states appear willing to concede that Iran has a right to conduct reasonable searches on neutral ships for contraband that might be bound for Iraq.<sup>62A</sup> However, some states have shown a reluctance to trust Iran under such circumstances.<sup>63A</sup>

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<sup>58A</sup>See supra pp. 72-79 and accompanying notes; IISS (London), supra note 34A, at 67-69 (discussing how the GCC states view Iran's revolution as a threat to their security).

<sup>59A</sup>See IISS (London), supra note 34A, at 67-69.

<sup>60A</sup>See N.Y. Times, Jun. 12, 1984, sec. A, at 12, col. 3.

<sup>61A</sup>See Time Mag., Jun. 4, 1984, at 30-31.

<sup>62A</sup>See N.Y. Times, Jan. 14, 1986, sec. A, at 1, col. 6 (Reagan Administration states that Iran's visit and search of SS President Taylor may have been within Iran's rights).

<sup>63A</sup>Some states (including the U.S.) have expressed concern that Iran will go beyond lawful conduct in carrying out visits on merchant ships. This arises in part from Iran's sponsorship of terrorism and hostage-taking, and its avowed hostility toward the West. See Washington Post, Nov. 11, 1985, at A25; N.Y. Times, Jan. 15, 1986, sec. A, at 1, col. 2; Washington Post, May 15, 1986, at A25 (discussing the U.S. position on Iranian visits).



#### D. Conclusions

Analyzing the Iranian attacks and visit and search practices under the various contextual criteria does not alter the assessments of Iran's practices under the traditional prescriptions of international law. Iran may have grounds for a reprisal action against Iraq and for retaliatory action to prevent GCC states from assisting Iraq, but engaging in attacks on neutral vessels does not constitute a legitimate means of pursuing these claims. Reasonable visit and search procedures, on the other hand, are a recognized belligerent right and can be utilized to prevent contraband from reaching Iraq.

In the context of limited warfare, the rights of neutral states must be considered and weighed against the belligerent rights. The Iranian attacks threaten neutral interests -- to a greater degree than those carried out by Iraq -- since they involve interneutral trade and extend to sea-lanes throughout the Persian Gulf. There is no commensurate military need to justify this degree of interference with neutral shipping.

The attacks are also excessive as a means of preventing outside assistance from reaching Iraq. The targets of Iran's attacks are not limited to those engaged in or reasonably suspected of being engaged in such activity.

The Iranian attacks, as a military tactic, are not disproportionate to the overall dimensions and intensity of the conflict.



However, the attacks are escalatory in terms of geographic scope and in the degree of implication of neutral values.

The imperatives of military necessity and effectiveness do not support the legality of Iran's attacks either in terms of a reprisal against Iraq or as a retaliatory action against the GCC states. As a reprisal, the practice is not necessary or effective since it is not directed at Iraq. It is not necessary as an action against the GCC states since a viable alternative exists in visit and search operations; nor is it effective, since the attacks are not limited to or directed specifically at shipping carrying contraband to Iraq.

Iran's objectives vis-a-vis Iraq appear to be more political than military. By attacking Iraq's supporters they may hope to create pressure on Iraq to stop its attacks on shipping and deter future assistance for Iraq. This motivation further undercuts the legitimacy of Iran's attacks on shipping.

Iran's attacks have caused damage to neutral values. This damage serves no legitimate military ends since it is not directed against Iraq nor specifically at GCC shipping which assists Iraq.

The international community has rejected Iran's claim to respond to Iraq's attacks by attacking interneutral trade. This is reflected in U.N. Resolution 540, by the defense measures taken by the GCC states, and by the stated intentions and concerns of Western states. On the other hand, states have implicitly





conceded the essential lawfulness of Iran's visit and search practices, although reserving the right to respond to any excesses.

These contextual factors, taken both individually and as a whole, suggest that the customary prescriptions of international law pertaining to Iran's practices remain valid under the contemporary circumstances of the Iran-Iraq War. Iran's attacks are unlawful; however, its exercise of reasonable visit and searches are supportable under international law.



## Appendix I

### IRAQI ATTACKS

1981

21 May: Iraqi aircraft slightly damaged the Panamanian bulk carrier Louise I just outside the northern Iranian port of Bandar Khomeini.

19 October: An Iraq missile damaged the Liberian bulk carrier Al Tajdar near Bandar Khomeini, and the Panamanian bulk carrier Motra was bombed and seriously damaged. Both were later repaired.

25 October: Iraqi missiles set the Indian bulk carrier Rashi Vish Wamitra ablaze near Bandar Khomeini, causing heavy damage.

1982

11 January: Two Iraqi missiles set fire to the Panamanian freighter Success, causing her to be abandoned. The Greek bulk carrier Annabella was damaged by a mine near Bandar Khomeini.

14 February: The 16,000-ton Iranian tanker Mokran was seriously damaged by mines laid by the Iraqis near the northern port near Bandar Mahshahr.

30 May: The Turkish tanker Atlas was seriously damaged during an Iraqi bomb attack on Kharg Island.

6 June: The Greek 26,000-ton bulk carrier Good Luck was damaged by Iraqi missiles off Bandar Khomeini. Three crewmen were killed. 9 August: Iraqi missiles sank the 15,000-ton Greek freighter Lition Bride near Bandar Khomeini and damaged the 16,000-ton South Korean bulk carrier Sanbow Banner beyond repair. Eight crewmen were missing and one killed aboard the Sanbow Banner.

4 September: The Turkish bulk carrier Mar Transporter was damaged beyond repair by a direct Iraqi missile hit on her engine room near Bandar Khomeini. She was sailing in a ten-ship convoy escorted by Iranian naval vessels.

11 September: The Greek freighter Evangelia S. struck an Iraqi mine at the entrance to Bandar Khomeini harbor, was grounded and abandoned.

21 November: The Indian bulk carrier Archana was slightly damaged by an Iraqi missile attack at the Iranian port of Bushire.

18 December: Iraqi missile set fire to the Greek tanker Scapmount, which was abandoned in the channel leading to Bandar Khomeini.

1983

2 January: Iraqi aircraft set fire to the Singapore freighter Eastern and the Orient Horizon of Liberia, causing them to run aground while in a convoy from Bandar Khomeini.

15 May: The Panamanian oil tanker Pan Oceanic Sane was set ablaze by an Iraqi missile attack and abandoned in the Bandar Khomeini channel.

25 May: Iraqi aircraft slightly damaged the Panamanian supply ship Seatrans-21.



Appendix I cont.

31 May: The Indian bulk carrier Atj Pritt was seriously damaged by Iraqi missiles near Bandar Khomeini.

31 October: The Greek freighter Avra was set ablaze by Iraqi missiles near Bandar Khomeini as she sailed in a convoy escorted by Iranian naval vessels.

21 November: An Iraqi missile sank the 13,000-ton Greek bulk carrier Antigoni near Bandar Khomeini as she sailed in a convoy escorted by Iranian naval vessels.

8 December: The 16,000-ton Greek bulk carrier Iapetus was attacked by Iraqi missiles off Bandar Khomeini and abandoned, later to be repaired.

1984

1 February: A convoy of four Cypriot freighters--Breeze, Neptune, Skaros, and City of Rio--was attacked by Iraqi aircraft near Bandar Khomeini. The Breeze and Skaros were set afire by missiles and lost. The City of Rio struck a mine and grounded, and the Neptune was set ablaze but was not extensively damaged.

16 February: An Iraqi missile extensively damaged the Liberian freighter Al Tariq in the Iranian port of Bushire.

1 March: In an attack on a 15-ship convoy sailing between Bushire and Bandar Khomeini, the Indian bulk carrier Apj Ankiba was sunk by an Iraqi missile. The 19,000-ton British bulk carrier Charming was set ablaze and grounded after an Iraqi missile hit her superstructure. The Turkish freighter Sema-G was set ablaze and abandoned. Two crewmen were killed.

27 March: In its first operational use by the Iraqi Air Force, a Super Etendard jet fighter fired an Exocet missile at the 85,000-ton Greek tanker Filikon L., carrying 80,000 tons of crude oil from Kuwait, south of Kharg Island: the Iraqi pilot had apparently assumed the tanker was carrying Iranian oil. The missile tore a gash in the hull, slightly damaged the star-board side of the bow, slop tank and number 4 tank, but failed to detonate. Two hundred tons of oil leaked out. U.S. experts later defused the missile.

29 March: The 16,000-ton Greek freighter Iapetos was set afire by an Iraqi missile and abandoned at the head of the Persian Gulf.

18 April: An Iraqi missile slightly damaged the 52,000-ton Panamanian tanker Rover Star while sailing in ballast to Kharg Island.

25 April: The 357,000-ton Saudi tanker Safina-Al-Arab, carrying 340,000 tons of Iranian crude, was seriously damaged by an Iraqi missile south of Kharg Island. The missile blew a 240-square-foot hole in the starboard side, bending the hull plates inward. It caused an explosion and fire in number 11 starboard tank which spread to number 9 and 10. The fire, which raged for two days, burned 10,000 tons of oil. The ship was declared a total loss. One crewman was killed.





Appendix I cont.

27 April: Iraqi missiles slightly damaged the 179,000-ton Liberian freighter Sea Eagle near Bandar Khomeini.

7 May: The 118,000-ton Saudi tanker Al-Ahood, loaded with 114,000 tons of Iranian crude, was set ablaze by an Iraqi missile near Kharg Island. The fire, which took five days to extinguish, burned 34,000 tons of oil. The missile struck the accomodation section near the engine room and caused extensive damage, described as follows on 28 May by a London Times reporter: It blew "a hole the size of a London bus along the waterline when an Iraqi missile exploded....The superstructure has been twisted back and outwards over the stern and the crew's quarters have simply melted down as if they were made of plastic rather than iron. The gash on the starboard side is so deep that you can see daylight through it." One crewman was lost.

13 May: An Iraqi missile slightly damaged the 69,000-ton Iranian tanker Tabriz, fully loaded with Iranian oil, south of Kharg Island.

14 May: An Iraqi missile set fire to the 62,000-ton Panamanian tanker Esperanza II while sailing in ballast to Kharg Island. The engine room and accomodation section was completely burned out.

18 May: An Iraqi missile sank the 17,000-ton Panamanian bulk carrier Fidelity near the Iranian port of Bushire.

24 May: An Iraqi missile narrowly missed the Arizona, a fullyloaded 140,000-ton Panamanian tanker, south of Kharg Island.

25 May: The 19,000-ton Liberian bulk carrier Savoy Dean was hit by an Iraqi missile in the north of the Persian Gulf.

3 June: The 153,000-ton Turkish tanker Buyuk Hun, sailing in ballast to Kharg Island, was damaged by an Iraqi missile 50 miles south of the island. The missile hit the accomodation section, killing three crewmen. The tanker was towed away by an Iranian tugboat.

7 June: An Iraqi mine blew a hole below the waterline on the side of the Liberian freighter Dashaki near the Strait of Hormuz. The ship had dropped off cargo at Bandar Abbas and was heading for Saudi Arabia.

24 June: The 152,000-ton Greek tanker Alexander the Great, fully loaded with Iranian oil, was slightly damaged by an Iraqi missile at Kharg Island. The missile penetrated an oil tank but failed to explode.

27 June: The Swiss-owned, Liberian-registered 260,000-ton tanker Tiburón, loaded with 250,000 tons of Iranian oil, was damaged by Iraqi missile southeast of Kharg Island. The missile hit the engine room and 100-foot flames spread to the accomodation section. The fire and subsequent explosions destroyed the entire superstructure and caused the funnel to collapse. Two days after the attack, the ship was wallowing with only three feet of hull above water. Salvage tugboats saved the oil by extinguishing the fire before it reached the tanks. The tanker was towed





Appendix I cont.

to Bahrain after eight crewmen were killed and three seriously injured.

1 July: The 6,200-ton South Korean cargo vessel Wonjn-Ho was damaged by an Iraqi missile while on her way to Bandar Khomeini. The 13,000-ton Greek freighter Alexander-Dyo was heavily damaged by another Iraqi missile during the same attack. Two crewmen were killed and four injured.

7 August: An Iraqi missile slightly damaged the 123,000-ton Greek tanker Friendship L. fully loaded with Iranian oil, 39 miles south of Kharg Island. The missile pierced an oil tank and caused a minor fire, which spread to the engine room and accomodation section but was quickly extinguished.

24 August: The 53,000-ton Cypriot tanker Amethyst, carrying 50,000 tons of Iranian crude, was damaged by an Iraqi missile south of Kharg Island. It was saved from sinking by tugboats which brought the blaze under control. The fire, which spread from the engine room to the accomodation section and some oil tanks, raged for 24 hours. One crewman was lost.

11 September: Fully-loaded Liberian registered, Norwegian-owned 251,000-ton tanker St. Tobias slightly damaged by an Iraqi Exocet, 50 miles south of Kharg Island. The missile blew a 6-foot hole on the ship's starboard side, and started a fire that was quickly extinguished. The oil cargo remained intact, and the tanker continued to Abu Dhabi under her own power for repairs.

12 September: The 500-ton German supply ship Seatrans 21, which had been slightly damaged on 25 May, was sunk by an Iraqi missile 50 miles south of Kharg Island. Six crewmen were killed.

8 October: The Liberian-registered 285,000-ton tanker World Knight was struck by Iraqi missile southwest of Kharg Island. The damage was heavy. The missile wrecked the engine room and set fire to the crew quarters. Seven crewmen were killed and five badly injured. The tanker was on her way to Kharg Island.

15 October: The fully-loaded Iranian 219,000-ton tanker Sivand was hit by Iraqi missiles and set afire after she left the Kharg Island oil terminal.

3 December: The 386,000-ton Cypriot tanker Minotaur was damaged by an Iraqi missile on her way to the Kharg Island oil terminal. The engine room was set ablaze, but the fire was under control five hours after the hit.

9 December: An Iraqi warplane fired an Exocet missile into the Bahamian-registered, 163,000-ton tanker B.T. Investor, on her way to the Kharg Island oil terminal. The missile punched a hole in a port tank, just above the waterline, igniting no fire and causing negligible damage. No crewmen were hurt.

15 December: The 241,000-ton Greek tanker Ninemia was heavily damaged by two Iraqi missiles on her way to Kharg Island. The first missile set the tanker's engine room afire, killing two crewmen. An Iranian air force helicopter took the survivors



## Appendix I cont.

to the port of Bushire.

17 December: The 21,000-ton Greek cargo ship Aegis Cosmic was hit on a port side cargo hold, apparently by an Iraqi missile, 85 miles north of Bahrain. The vessel, which was only slightly damaged and whose crew suffered no casualties, continued her journey.

21 December: The 53,000-ton Liberian-registered tanker Magnolia was hit by an Iraqi missile 31 miles south of Kharg Island, and two of her crewmen were killed. The Norwegian super-tanker Thorshavet, loaded with 230,000 tons of Iranian oil, was heavily damaged by another Iraqi missile during the same attack. Her 26 crewmen abandoned ship.

### IRANIAN ATTACKS

1980

3 April: Three foreign freighters were sunk and two others damaged by Iranian shells in the Iranian port of Khorramshahr during an exchange of fire with attacking Iraqi forces. At least 20 crewmen were killed.

1984

3 April: According to a report to the Indian Parliament, Iranian shelling set fire to the Indian freighter Varuna.

13 May: In the first reported attack by Iranian aircraft on commercial shipping, the 80,000-ton Kuwaiti tanker Umm al-Casbah, carrying 77,000 tons of Kuwaiti oil, was slightly damaged by Iranian rockets south of Kuwait. After being observed by a spotter plane, an Iranian F-4 jet fighter dived and fired two rockets. Both hit the deck and landed overboard.

14 May: The 30,000-ton Kuwaiti tanker Bahrah, sailing in ballast to Kuwait, was damaged by Iranian aircraft. Two F-4s fired five rockets at close range; two hit the starboard side, blowing a massive hole. One rocket hit numbers 4 and 5 wing tanks which subsequently caught fire. Two crewmen were injured before the fire was extinguished eight hours later. The ship continued to Kuwait.

16 May: An Iranian rocket attack slightly damaged the 215,000-ton Saudi tanker Yanbu Pride, carrying 120,000 tons of Saudi crude, within Saudi territorial waters near the port of Jubail. Out of the five rockets fired by the two F-4s, two hit the vessel and caused fire and explosion. Fire started in the starboard hold, but was quickly extinguished. Prior to the firing, the F-4s circled the tanker for identification.

24 May: Two Iranian F-4s damaged the 29,000-ton Liberian tanker Chemical Venture, sailing in ballast in Saudi waters, near the port of Jubail. The Iranian rockets hit the vessel in the middle of the superstructure, causing fire in the accommodation section and the bridge. The fire was extinguished but the wheelhouse was burned out. Ten crewmen were injured.



Appendix I cont.

10 June: An Iranian F-4 attacked the 295,000-ton Kuwaiti tanker Kazimah, sailing in ballast east of Qatar. The plane dropped bombs, which missed, then proceeded to fire rockets. The damage was slight and there were no injuries.

5 July: Iranian jets slightly damaged a Japanese-owned super-tanker, the Liberian-registered Primrose. It was hit by two rockets, but continued at full speed.

10 July: In what appeared as a case of mistaken identification, an Iranian F-4 attacked the 133,000-ton British tanker British Renown while sailing to pick up crude from the tanker Tiburon which had been struck by an Iraqi missile 27 June. Following the appearance of a spotter plane, an F-4 fired two rockets at the tanker. One bounced off the deck, and the other hit oil-loading equipment, igniting a small fire which was quickly extinguished. The attack took place in international waters 70 miles northwest of Bahrain.





## Appendix II

### SPECIAL WARNING No. 67.

#### PERSIAN GULF - STRAIT OF HORMUZ - GULF OF OMAN.

1. U.S. Mariners are advised to exercise extreme caution when transiting the waters in the Persian Gulf which are becoming increasingly dangerous due to continued attacks on vessels outside the military zones declared by Iran and Iraq.

2. In view of recent Iranian visit, search, and in some cases seizure of vessels of third countries within the Persian Gulf, Strait of Hormuz, and the Gulf of Oman, U.S. Mariners are advised to exercise extreme caution and to be alert to possible hazardous conditions, including hostile actions, when transiting these waters.

3. The Iranian Government has issued guidelines for the navigational safety of merchant shipping in the Persian Gulf, the relevant portions of which are as follows:

--- After transiting the Strait of Hormuz, merchant ships sailing to

non-Iranian ports should pass 12 miles south of Abu Musa Island;

12 miles south of Sirri Island; south of Cable Bank Light; 12 miles

south of Farsi Island; thence west of a line connecting the points

27-55N. 49-53E. and 29-10-N. 49-12E.; thereafter south of the line

29-10N. as far as 48-40E.

--- All Iranian coastal waters are war zones.

--- All transportation of cargo to Iraqi ports is prohibited.

--- The Iranian Government will bear no responsibility for merchant

ships failing to comply with the above instructions.

4. Deep draft shipping should be aware of shoal waters south of Farsi Island.

5. The Iraqi Government has stated that the area north of 29-30N. is a prohibited war zone. It has warned that it will attack all vessels appearing within a zone believed to be north and east of a line connecting the following points:

29-30N. 48-30E., 29-25N., 49-09E, 29-23N. 49-47E., 28-23N. 51-00E. The Iraqi Government has further warned that all tankers docking at Kharg Island regardless of nationality are targets for the Iraqi Air Force.

6. In view of continued hostilities between Iran and Iraq and recent acts of interference or hostility against vessels of third countries, U.S. Mariners are advised, until further notice, to avoid Iranian or Iraqi ports and coastal waters and to remain outside the areas delimited in paragraphs 3 and 5 above.



Appendix II cont.

7. The publication of this notice is solely for the purpose of advising U.S. Mariners of information relevant to navigational safety and in no way constitutes a legal recognition by the United States of validity [sic] of any foreign rule, regulation, or proclamation so published.

8. Special Warning numbers 53, 62, 65, and 66 are canceled.  
(DEP OF STATE) (20 Sep 1985)  
(emphasis added)













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